

Q. How long was your contract?

A. A one-year, limited contract.

Q. What program did you work in during this year?

A. I worked for the "English as a Second Language" program in Cleveland.

Q. And could you describe the program generally?

A. Yes. It is a federally-funded program which works in schools that qualify as Title 1, for Title 1 programs and funds; and what it primarily does is teach English to foreign speaking people or students in the Cleveland area. There are, I think, at that time there were about nine or ten schools in the program.

Q. And at what school were you teaching?

A. I was teaching at Tremont.

Q. Where is it located—Tremont?

A. It is on the near west side.

Q. And who is the principal at Tremont at the present time?

A. Mary Colby.

Q. Can you describe your work?

A. Yes. I screen-tested and taught approximately six foreign speaking students at Tremont schools. I was responsible for teaching them English, or the oral method, and also responsible for reading and writing, for these students.

Q. And did you use any tape recorders?

A. Yes, I did.

Q. O.K.; and did you have an aide with you when you were teaching?

A. Yes, I did. All of the teachers in the ASL program had aides.

Q. What did the aides do?

A. She was responsible for bringing my students to

my classroom and returning them after their half hour or hour class was over with.

She was responsible for doing interpretive work, not only for me, but also helped out the principal. Say that a student—somebody needed a letter written in Spanish, and she would be responsible for that; and she did bulletin board work and artistic work, and things like this.

Q. Did you become pregnant during the school year?

A. Yes, I did.

Q. When did you find out that you were pregnant?

A. In the middle of October.

Q. And after you found out, did you tell your supervisor?

A. Yes, I did.

Q. And when did you tell her?

A. I can't remember the exact date, but it was the end of November or early December.

Q. And you told your principal too?

A. Yes, I did.

Q. And did your principal tell you that you would have to resign?

A. Yes, she did.

Q. Did you in fact resign?

A. Yes, I did.

Q. And at the end of what month of your pregnancy did you resign?

A. It was at the end of my fifth month.

Q. And what day was that? When was the last day of teaching?

A. I don't have the paper, but it was February 7th or February 10th. I don't know for sure.

Q. And at the time that you discussed resignation with your principal, did you ever offer to waive liability so you could continue teaching?

A. Yes, I did.

Q. Now, did you ever inquire about doing volunteer work for your supervisor or principal?

A. Yes, I did. I inquired with my supervisor.

Q. And what did she suggest?

A. She knew of a school that did not qualify for Title I funds, but at the same time had the need of a special teacher who could teach English, because there was a large number of foreign speaking students at the school, and they were right in the regular classroom with the other students, and she asked me if I would be interested in volunteering at the Barkwill School.

Q. And did you in fact decide to volunteer to teach at the Barkwill School?

A. Yes, I did.

Q. And where is the Barkwill School located?

A. Around 55th and Broadway.

Q. Who was the principal of Barkwill School.

A. Miss Fuchs, F-u-c-h-s.

Q. And you discussed volunteering with Miss Fuchs?

A. Yes, I did.

Q. How many days a week did you work?

A. I taught two days a week.

Q. Well, was there any reason why you taught two days rather than five?

A. Yes. The reason was because I could get transportation to and from the school on those two days of the week.

Q. I see; and did Miss Fuchs know you were pregnant?

A. Yes.

Q. Did she know when your baby was due?

A. Yes.

Q. What were your duties at Barkwill?

A. They were primarily the same as Tremont; however, I had approximately 30 students rather than the six I had at Tremont, and I was responsible because I did not have an aide, and it was not ASL title, because I was doing it as a volunteer.

I was responsible for bringing the students to my class and returning them, which meant walking around the building.

Q. And you didn't have an aide?

A. No.

Q. How long did you teach?

A. I taught from the middle of February until the middle of May.

Q. And in relation to your pregnancy, how long did you teach?

A. It was the end of my eighth month.

Q. How many times were you absent during this volunteering?

A. Once.

Q. And what was the reason for this absence?

A. Because the girl who drove me could not come. She had to leave town.

Q. Did the students at Barkwill know that you were pregnant?

A. Yes, they did.

Q. How did they react to your pregnancy?

A. If anything, they acted very genteel and kind of comparative about it, because they were making statements as, "My mommy just had a baby," or, "My mommy had twins," or, "What are you going to have, a boy or a girl;" and that was from my own students, and because I did come into contact with students as I went through the halls to pick up my own students, I never experienced any form of hostility or mockery or whatever. It was favorable.

Q. There were no snide remarks or giggling?

A. No.

Q. Did you teach boys and girls?

A. Yes, I did.

Q. Now, how about Tremont, which is the school you taught at first. Did the students at Tremont know you were pregnant?

A. At the end they did.

Q. Did they react unfavorably?

A. No. They asked why I had to leave.

Q. O.K.

Now, did you notify the principal at Tremont that the last day of teaching would be at the end of your fifth month?

A. I did.

I have to say the issue of time was very confused. Do you want me to go into it?

Q. Yes.

A. O.K.; because when I first notified her it seemed to me that she thought I could also work to the end of my fifth month. There was a problem of communication or whatever, and so what she did was counted back and forth. She counted back—I was due in June, and she said, "June, May, April, March," and I could work until the end of February. O.K.

And then the second time I spoke with her I think she asked me my exact date, and I said it would be between the first two weeks—sometime within the first two weeks of June; and so she counted back again, like June 10 to May 10, and so forth, and got back to the first of February.

And then the third time I spoke with her there were five or six girls at Tremont school that were pregnant, and I don't think she actually had a list of exactly the dates that everybody was due; so she had us all come into the office and state specifically the date; and at that time she said, "You have to leave at the end of the fourth month."

Well, about that time it was the end of January, so I left within the week, or I left the first week of February.

MISS AGIN: No further questions.

CROSS-EXAMINATION OF KATHRYN TUCKER

By Mr. Clarke:

Q. Just a couple of questions, Mrs. Tucker.

Barkwill School is the school where you taught voluntarily for two days a week?

A. Yes.

Q. Were you actually responsible for that class, or was there a responsible teacher there too?

A. There was not a responsible teacher there.

Q. Go ahead.

A. I was responsible for the students.

Q. What were you teaching them?

A. I taught English as a second language, which means the method is a little different than you taught in a regular classroom.

Q. What was the native language?

A. There were Puerto Rican children and Mexican; so it would be Spanish in that case, and also there were several children from Yugoslavia, which in that case it would be Serbian.

Q. Croatian?

A. Right.

Q. You were then teaching twice a week as a volunteer, as a special teacher then?

A. Yes.

Q. That is all I have — for three months?

A. From February to May.

Q. That is three months.

A. Right.

MISS AGIN: One further question, please.

REDIRECT EXAMINATION OF KATHRYN TUCKER

By Miss Agin:

Q. As a volunteer you were not paid?

A. No. I was not paid.

Q. And when was your baby born?

A. My baby was born June 10th.

MR. KATZ: Your Honor, in view of the hour, I would like to beg the Court's indulgence. We have four witnesses, and one witness to take a deposition of, re-

maining. Because they were all professional witnesses, we have had to schedule them at different times, and we only have one witness scheduled this afternoon, and he is scheduled to be here at 2:30.

I am afraid we could not get the people to rearrange their schedules any more than they have.

THE COURT: Couldn't you get him to come in at 2:00 o'clock?

MISS AGIN: We could try to reach him.

(Thereupon the court was adjourned for the luncheon recess.)

APRIL 19, 1971; 2:00 O'CLOCK P.M.

THE COURT: Please be seated and proceed.

MR. CLARKE: May it please the Court, Mr. George Pring of our office will be sitting at the counsel table.

THE COURT: Yes. Thank you.

MISS AGIN: Your Honor, I am ready to call the next witness.

THE COURT: Proceed.

MISS AGIN: We call Dr. Rutenbeigs.

DR. VERNERS RUTENBEIGS, having been called as a witness on behalf of the plaintiffs, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DR. VERNERS RUTENBEIGS

By Miss Agin:

Q. Please state your name and occupation.

A. Verners Rutenbeigs; V-e-r-n-e-r-s R-u-t-e-n-b-e-i-g-s.

Q. Now, I would like to go into your education and background a little bit. Could you please tell the Court where you went to college.

A. I went to Western Reserve Adelbert College.

Q. And medical school?

A. Ohio State University.

Q. And internship?

A. St. Luke's Hospital, Cleveland, Ohio.

Q. Did you spend any time in the Army?

A. I was in the Army for two years.

Q. And then your residency?

A. St. Luke's, Cleveland, Ohio; three years.

Q. What did you do your residency in?

A. Obstetrics, gynecology.

Q. Where are you practicing now?

A. Kaiser Foundation, Cleveland, Ohio.

Q. How long have you been at Kaiser?

A. A year and a half.

Q. How many pregnant women have you treated in a professional capacity?

A. I would say in three years, and of one and a half at Kaiser, about 1,000.

Q. And has the plaintiff, Ann Nelson, been one of your patients?

A. Yes.

Q. How long has she been under your care?

A. Since the middle of January, '71.

Q. And is she in good health?

A. She is.

Q. Has she asked you whether she can continue to teach?

A. She has done that, yes.

Q. What is your medical opinion? What did you tell her?

MR. CLARKE: Just a moment, please. I object unless it is further questioned as to the witness's knowledge of what the teaching conditions are under which this lady would perform her duties.

Q. Are you familiar with what a teacher does generally?

A. I understand she is a French teacher, and - -

THE COURT: Wait. Put the question again, and follow the question. Read the question.

(Thereupon the pending question was read by the court reporter.)

A. Yes, because I have been in junior high.

THE COURT: The answer is, "Yes." Just answer the question, please. Don't volunteer. We will go faster. Go ahead.

Q. So you are familiar?

A. Yes.

Q. And you did answer her question as to whether in your opinion, based on your knowledge of teaching and her job, she could continue to teach?

A. I said she could.

Q. How long did you feel, and did you tell her, she may continue to teach?

A. I feel that she could teach as long as she felt motivated to do so.

Q. And you told her this?

A. Yes.

Q. Of the one thousand pregnant women that you have treated, do you have any idea about how many were employed, or told you that they were employed?

A. That would be a guess. I really could not tell exactly.

Q. But if one of your patients who was pregnant told you that she worked, and the job was similar to teaching, if not teaching, and if she were in good health, would you tell that patient, and have you told such patients, that they could continue working in their pregnancy?

THE COURT: Wait a minute. You have got a dozen questions in one, so I can rule on each one if necessary, and hold up a minute.

Now, put a question please. Just one question at a time. They can object, and I will understand.

Q. In the past, if a patient of yours was in good health and had a job as a teacher and asked if she could continue to teach during her pregnancy, how would you advise her?

A. I would say that they could teach except if they were involved in teaching gym.

MR. CLARKE: Except what?

A. (Continuing) — if they were teaching gym classes, physical education classes.

Q. Could you generalize about pregnant women teaching classes which are not gym classes as to their physical capacity to teach during pregnancy?

MR. CLARKE: Objection.

THE COURT: Sustained.

A. They are — if they are in good health —

THE COURT: Wait a minute. Put a question, and that wasn't one — "could you generalize."

MISS AGIN: Yes; but could he give a general opinion?

THE COURT: I ruled on that. Put another question if you have one.

Q. Do you believe that women can continue working during pregnancy?

A. I believe they may do so, yes.

MISS AGIN: That is all.

MR. CLARKE: May I proceed?

THE COURT: Yes, sir.

CROSS-EXAMINATION OF DR. VERNERS RUTENBEIGS

By Mr. Clarke:

Q. Dr. Rutenbeigs, what was the date of your graduation from Western Reserve University?

A. 1959.

THE COURT: '59?

THE WITNESS: June, 1959.

Q. What is the date of your graduation from medical school at Ohio State University?

A. June, 1963.

Q. And subsequent to that you were an intern at St. Luke's?

A. Yes.

Q. During what years?

A. '63-'64.

Q. In '63-'64, did you have the sole responsibility for those patients whom you examined — those pregnant patients?

A. No; not as an intern.

Q. Then — by the way — did you include any of those ladies in your estimate of 1,000 that you have treated?

A. During the internship; no.

Q. Now, your residency — when were you a resident at St. Luke's?

A. 1966 to 1969.

Q. And that was OB-GYN?

A. That is correct.

Q. In what instances did you have the responsibility for pregnant ladies who were patients of yours?

A. On and off during the training. I was involved with pregnant ladies, I would say, about half of the time in the year and a half.

Q. I know you were involved with pregnant ladies, but wasn't somebody else their principal doctor during your residency?

A. No. I would say for about a year of that time I probably was almost completely responsible. If there were any major problems, then I would go to a staff man who was in charge of the Service, but otherwise I would be pretty much completely in charge.

Q. Were these patients of the private OB-GYN's who had the women in as private patients?

A. No. They were of the staff patients, mostly ADC patients that were coming to St. Luke's Clinic.

Q. Most of the ADC patients then were, by definition, not employed?

A. That is correct.

Q. So most of the people you examined, and for whom you had the responsibility during your internship, were unemployed and on Aid to Dependent Children?

A. During the residency, yes.

Q. You have been with the Kaiser Foundation how long?

A. A year and a half.

Q. Approximately how many patients have you examined during that period with OB problems; that is, pregnant women?

A. I would say about 300 to 350.

Q. That is in the last year and a half?

A. Yes.

Q. Now, Doctor, you, as a doctor, in talking about the term, the nine-month term for delivery of a human fetus, pretty generally divide that up to a trimester; the first trimester, the second trimester, and the third trimester?

A. Yes.

Q. And the first trimester is the first three months. That is the period of morning sickness?

A. Correct.

Q. And also do you not, as a doctor, divide the loss of the fetus as to whether or not it occurs during the first 20 weeks or the latter weeks of pregnancy?

A. Correct.

Q. And the first 20 weeks, if the fetus is lost, it is determined either a miscarriage or abortion?

A. True.

Q. And the last 20 weeks, if the fetus is lost, it is determined a live birth or still birth?

A. Yes; after 20 weeks.

Q. Now, I am talking about, not about the second trimester, but the third, the seventh, eighth, and ninth months of pregnancy.

There are certain problems that occur in normal healthy women having a normal healthy child during these last three months of pregnancy, are there not?

A. That is correct.

Q. Well, that is why the doctors advise, during the last three months, why they need the doctor's advice?

A. True.

Q. And it is important in good medical treatment for a pregnant woman to be under a periodic examination by a doctor?

A. True.

Q. Now, a pregnant woman during her term can be expected to gain between 15 and 20 pounds in weight, can she not?

A. True.

Q. And her center of gravity changes during that period of time, doesn't it, Doctor?

A. It probably does, yes.

Q. That is to say, sometimes during that nine-month period, with the growth of the fetus in the lower abdominal area, the woman's center of gravity changes?

A. Yes, sir.

Q. And as the fetus grows, that increases the pressure on the uterus, doesn't it, or on the — what is that part of the anatomy that holds the urine?

A. The uterus, where the urine comes out?

Q. Yes, where the urine is held prior to its expulsion.

A. The bladder.

Q. That increases the pressure on the bladder?

A. Yes, it does.

Q. And the frequency of urination in the last three months is greater than the non-pregnant woman?

A. True.

Q. And also the pressure of the growing child within the woman's body presses upward into the areas of the stomach, does it not?

A. True.

Q. And that has its effect upon the appetite of the pregnant woman, does it not?

A. The pressure; no.

Q. Let me withdraw that question and put it this way:

Doesn't the presence of the fetus in the later months of pregnancy have an effect on a pregnant lady's desire of when she wants to eat, and when she is hungry; that she wants to eat all the time? Hasn't that been your experience?

A. No.

Q. No?

A. I think increased appetite during pregnancy might be on the basis of a hormone change. You have more desire for different kinds of food, because of hormonal changes.

Q. In any event, there is a desire for different types of food, and that is on the basis of a hormone change in the body.

It is a very good normal thing; isn't it?

A. Well, not necessarily. It depends how much weight they are gaining. If they are gaining too much, it is a bad thing; and if not enough, then it is probably a good thing.

Q. Well, a high protein diet is essential, I take it?

A. Yes.

Q. The type of diet that may not necessarily have been available to her prior to her pregnancy?

A. Well, yes.

Q. Now, when a lady has reached the eighth month of a pregnancy, and has gained between 15 and 20 pounds, and has changed her center of gravity, is she able to engage in physical exertion at the same speed and at the same agility with which she engaged in that prior to her pregnancy?

A. Probably not with the same agility and speed.

Q. What is a placenta previa, Doctor?

A: That is where the placenta is in front of the cervix, or the opening where the baby is delivered through.

Q. Actually there could be different types of a placenta previa, depending on the degree of covering of the cervix?

A. True.

Q. And a placenta previa in a pregnant lady beyond six months pregnant is a very serious thing?

A. Yes.

Q. It can lead to sudden bleeding and death, can it not?

A. True.

Q. And can a placenta previa be induced by sudden, quick, physical exertion?

A. It could.

Q. What is the toxemia of pregnancy, Doctor?

A. That is poisoning of a pregnancy.

Q. What causes that?

A. No one knows.

Q. What are the symptoms?

A. Weight gain, protein in the urine, and swelling.

Q. How about high blood pressure?

A. True.

Q. Can you relate to high blood pressure of the toxemia of pregnancy to that which causes high blood pressure in the normal human being; that is, excitement, stress, exertion, and the sort of thing that would cause a person's blood pressure to go up in a normal person? Can you relate that high blood pressure to the toxemia of pregnancy?

A. No.

Q. Doctors don't know whether that is or is not the cause?

A. They don't know the cause.

Q. That likewise is a very serious thing, is it not?

A. That is.

Q. And when you find that in one of your patients, you hospitalize her?

A. Usually, yes.

Q. Doctor, you testified that you were familiar with the conditions under which teachers practice their profession in the public schools today. Are you familiar with the number of incidents of assaults upon teachers in the Cleveland public schools in the last two years?

A. Not the number, no.

Q. You are familiar with the fact that such assaults have occurred?

A. Yes.

Q. Do you know how many?

A. No.

MR. KATZ: Objection. That would not be within the witness's knowledge.

THE COURT: What?

MR. KATZ: Within the witness's knowledge.

THE COURT: He will have to say that, not you.
Put the question again.

Q. Have you ever been in Patrick Henry Junior High School, doctor?

A. No.

Q. Have you ever been in Central Junior High School?

A. No.

Q. When was the last time you were inside any junior high school within the limits of the City of Cleveland?

A. Early '50's.

Q. So your familiarity with the interior of a junior high school in the City of Cleveland goes to the early 1950's?

A. True.

MR. CLARKE: That is all I have.

THE COURT: May we find out what high school he is talking about?

MR. CLARKE: Yes.

Q. What high school, what junior high school did you enter in the early '50's, if you recall?

A. It is on the east side. I can't remember the name offhand.

Q. Perhaps you would tell the Court the occasion of your being there?

A. I was in junior high. I was a student there.

Q. In a Cleveland junior high school, in the 1950's?

A. Correct.

THE COURT: Where was it located?

THE WITNESS: 55th and Broadway, Myron T. Herrick.

Q. And you are a graduate of Myron T. Herrick?

A. That is right.

Q. And your familiarity with conditions goes to Myron T. Herrick, when you were there as a student?

A. True.

MR. CLARKE: That is all. Thank you, sir.

REDIRECT EXAMINATION OF DR. VERNERS RUTENBEIGS

By Mr. Katz:

Q. Doctor, you were asked about the change in the center of gravity on cross-examination. When does that occur?

THE COURT: May I ask the question; who asked him on direct examination?

MR. KATZ: Miss Agin.

THE COURT: Then she has to take him over. You can't switch.

MR. KATZ: Yes, your Honor.

THE COURT: Let's follow the rules.

By Miss Agin:

Q. Could you tell me when the change of the center of gravity occurs?

A. I would say at the end of the pregnancy.

Q. At the end of—

A. After six months, when the abdomen is markedly increased in size.

Q. Now, the change in pressure in the uterus; when did this occur?

A. I think that probably starts from the very beginning. As the contents get bigger, they probably increase the pressure inside the uterus.

Q. Now, with respect to the change in the center of gravity, how does that affect the patient? Which change does that produce in the patient?

A. Occasionally it might cause difficulty in keeping balance, but that is not a common situation.

Q. Not common.

Would you say that this change in gravity would in any way affect a pregnant woman's ability to walk up and down the stairs or stand in a classroom?

A. If she is careful, no.

Q. Now, this placenta previa that Mr. Clarke referred to; would you say that walking or standing could cause this condition?

A. That would not cause the condition, but if you have the condition—if someone was a gym teacher, would be driving, or horseback riding, she could probably stir up bleeding; but if someone had a placenta previa, I would say anything could set up bleeding.

Q. But if a person did not have this condition, would it be your opinion that walking upstairs or standing or walking would cause bleeding?

A. It could occur for other reasons. It could occur for other reasons.

Q. To your knowledge does Elizabeth Ann Nelson have a placenta previa?

A. I would say her chances are probably just like anyone else's, which might be one chance in 200 to 250.

Q. Does she have a toxemic pregnancy?

A. Not at this point.

Q. What are the chances of her developing a toxemic pregnancy?

A. I would say just like anyone else's chances, which probably is about 9-10 percent.

Q. Would you say that if a patient is under fairly constant medical care, that there is a better chance of avoiding a toxemic pregnancy?

A. That is true.

MISS AGIN: That is all, your Honor.

MR. CLARKE: Just one question.

RE-CROSS-EXAMINATION OF DR. VERNERS RUTENBEIGS

By Mr. Clarke:

Q. I have just one question about the toxemic pregnancy. Is the onset totally unforeseen, absent the development of those symptoms; isn't that true?

A. The symptoms occur slowly, and that is why patients come on a regular basis to see us.

Q. Right; but until you get the symptoms in the urine and high blood pressure, it could be totally unforeseen, and would appear to you as a normal pregnancy?

A. That is right.

Q. So until those symptoms appear, it is totally unforeseen?

A. That is true.

MR. CLARKE: Thank you, sir.

MISS AGIN: One further question, your Honor, if I may.

Q. Now, the change in pressure in the uterus; when did this occur?

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MR. CLARKE: Thank you, sir.

MISS AGIN: One further question, your Honor, if I may.

FURTHER REDIRECT EXAMINATION OF
DR. VERNERS RUTENBEIGS

By Miss Agin:

Q. If your patient developed a toxemic pregnancy, would you recommend at that time that she discontinue her duties and stay home?

A. No. She probably would be admitted to the hospital.

FURTHER RECROSS-EXAMINATION OF
DR. VERNERS RUTENBEIGS

By Mr. Clarke:

Q. I take it your answer is not "No," but, "Yes," you would recommend the termination of her teaching duties if you had a diagnosis of a toxemic pregnancy?

A. That is true.

MISS AGIN: No further questions.

THE COURT: That is all, sir.

MR. KATZ: Your Honor, due to the schedule of our witness we have no further witnesses scheduled for this afternoon. Mr. Clarke and I have discussed this matter, and he has agreed to put on one of his witnesses this afternoon.

MR. CLARKE: I have a witness ready, if I have your Honor's consent to put him on out of order.

THE COURT: Surely.

MR. CLARKE: And I have the consent of plaintiff's counsel?

MR. KATZ: Yes, you do.

DR. WILLIAM C. WIER, having been called on behalf of the defendants, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DR. WILLIAM C. WEIR

By Mr. Clarke:

Q. Now, Doctor, please speak out in a loud, clear voice. We want to make sure his Honor hears everything.

Tell the Court your name, please, sir.

A. William C. Weir.

Q. Where do you live, sir?

A. 2571 North Park Boulevard, Cleveland Heights, Ohio.

Q. What is your profession or occupation?

A. Physician.

Q. Will you tell the Court something of your formal education, college and professional.

A. I graduated from Harvard College with an AB degree in 1931, and from Harvard Medical School with an MD degree in 1935.

I had a rotating internship in medicine and surgery at the Faulkner Hospital in Boston, and I had a two-year straight surgical internship at the University Hospitals here in Cleveland, and I had three years in obstetrics and gynecology, residence training at the University Hospitals of Cleveland.

Q. Following the completion of your three years' residency in OB and GYN at the University Hospitals of Cleveland, what did you do, sir?

A. I just started in practice, and then went into the Navy. I finished in 1941, and went into the Navy in March of 1942.

Q. How long did you serve in the United States Navy?

A. Three and a half years.

Q. What was the nature of your professional work during your Navy service?

A. Well, it was mostly just general medicine for the first two and a half years, plus—but in the last year I was sent out to the United States Navy Hospital in Seattle to work as a gynecological consultant for the Fourteenth Naval District.

Q. So you ended up your career in the Navy as an OB-GYN?

A. Yes.

Q. —GYN, at least?

A. Yes.

Q. There were babies in the Navy Hospitals, too?

A. Well, the obstetrical service was run for the dependents. I was in charge of the Waves.

Q. Subsequent to the completion of your Naval service, what did you do, sir?

A. I went into private practice.

Q. Whereabouts?

A. Cleveland.

Q. Doing what work?

A. Obstetrics and gynecology.

Q. This would be in 1946?

A. Yes, sir.

Q. How long did you remain in private practice in general OB-GYN in Cleveland?

A. I remained in OB and GYN up until approximately two and a half years ago, when I stopped doing obstetrics and confined myself to the field of infertility.

Q. Will you tell the Court what you mean by the "field of infertility"—which is what you are engaged in at the present time, I take it?

A. Yes. May I preface by saying that I became interested in the problems of infertility, of couples having difficulty having children, shortly after I got out of the service and was appointed the Chief Gynecological Consultant at the Infertility Clinic at the Maternal Health Association, where I worked for 20 years until it was phased out in 1968.

And just about that time I was delivering a lot of babies of these girls that got pregnant in the clinic, and I had a fairly large infertility practice of my own, and would deliver these patients; and then about two and a half years ago I thought I was getting a little bit too old to get up in the middle of the night, and I decided to confine my work strictly to the infertility problems.

Q. Now, are the problems of infertility the problems of married couples who are having trouble in conceiving and having children?

A. That is correct.

Q. And your specialty has been trying to make it possible for them to have children?

A. Right.

Q. That has been your specialty at least in the two years since your retirement from active obstetrics?

A. Yes, because I was active in obstetrics for 20 years, very active.

Q. Do you do any consulting work on the faculty and medical schools of Case-Western Reserve?

A. I have been a member of the faculty of the medical school ever since I returned to Cleveland, in 1936; and I am now Associate Clinical Professor of OB and GYN.

Q. You have been a member of the faculty 20 years, and you are now an associate clinical professor?

A. That is correct.

Q. Thank you, sir.

Could you estimate how many babies you have delivered, including at least one Clarke?

A. Well, I would put it this way: When I was in active OB practice I would average between 10 and 20 babies per month, now, that would be 120 to 200 per year, and 20 years. You may add that up.

Q. Babies from all classes and creeds?

A. Yes.

Q. From all types of races?

A. Yes.

Q. Have you during the course of your work ever published anything?

A. Yes. I have published many papers in the area of infertility.

Q. And have those been printed in the Medical Journal?

A. They have appeared in many different medical journals, but more in the Fertility and Sterility Journal.

I have given papers to many medical meetings here and abroad, at the World Congress of Infertility in Stockholm, Israel, and New York, and Rome.

Q. Doctor, I take it that you are a member of a number of medical societies?

A. Yes, I am.

Q. Are there any particular medical societies in your specialty in which you are a member?

A. Yes. There is the American College of OB and GYN; and I am a Founding Fellow of that. I am one of the original members of the American Fertility Society, and I am a member of the Cleveland Obstetric and Gynecological Society as well.

Q. I am going to ask you if you are a Fellow, but I take it you are a Founding Fellow?

A. That is the American College of OB and GYN. That was just started up shortly after the war, and they made me one of the Founding Fellows.

I am also a Diplomate of the American Board of OB and GYN, and I was made a Diplomate in 1941.

Q. I suppose it goes without saying that you are licensed to practice medicine in the State of Ohio?

A. Correct.

Q. Now, sir; I would like to ask you some questions, generally, about the nature of pregnancy and the problems of pregnancy. Let's start out by having you tell the Court about a normal, healthy lady who becomes pregnant. What is her average weight gain during the term of her pregnancy?

A. This varies considerably. The average weight gain considered healthy is 20 pounds throughout the pregnancy. Many patients put on more than this without any detrimental effects.

Q. Is the weight gain something that a doctor observes carefully?

A. Every patient is weighed every time she comes in the doctor's office, to watch this weight gain.

Q. Do you, as a physician, divide up the nine-month period into say three periods?

A. Yes. We have a first trimester, the second trimester, and the third trimester.

Q. Why do you make such a division?

A. Well, because the complications that occur in each of these things, which are a little bit different than the others.

Q. Tell us, first, briefly, what the complications of the first three months are.

A. The first three months are primarily a spontaneous abortion, and nausea and vomiting, and headaches, and so on.

Q. What are the causes of spontaneous abortion during the first three months of a pregnancy?

A. Well, we are not always sure of this. We think primarily they lie in two areas:

(1) There is some defect in the fertilized egg, and nature throws it off.

(2) We feel that the fertilized egg might be implanted in the portion of the wall, the interwall of the womb, where it doesn't get sufficient nourishment, and nature again discards it.

Q. By the way, will you describe the difference between a miscarriage-abortion on one hand, and live and still-birth on the other; if there is such a distinction.

A. Yes. Actually it is legal now, that any pregnancy that is terminated before up to 20 weeks is considered a miscarriage or an abortion.

Q. Are those words interchangeable?

A. Yes. They do not require any certification or any legal things involved.

Any pregnancy that terminates after 20 weeks legally requires either a stillbirth certificate or a live birth certificate.

Q. Very well, sir.

Now, have we completed most of the complications of the first trimester of pregnancy?

A. —or spontaneous abortion or hyperemesis gravidarum, which is a very severe nausea that requires bed rest.

Q. Now, what complications occur during the second trimester of pregnancy? This is the fourth, fifth, and sixth month.

A. We do run into prematurity in this trimester, and we do have a spontaneous patient going into labor and spontaneously delivering a premature child; and we do have a toxemia of pregnancy in this of the earlier forms; and sometimes it is severe, and this is characterized by high blood pressure, and in very severe cases, of convulsions.

Q. Can a toxemic pregnancy be foreseen before you get certain symptoms?

A. Yes, to a certain extent. We follow our patients, and if we notice a rise in blood pressure, or the appearance of albumin in the urine, we are alerted that we may have a potential toxemic patient on our hands.

Q. How frequently does the toxemic pregnancy occur?

A. We speak of it as a general term. It varies in the economic groups, and it is as high as 10 percent in the lower economic groups, probably 10 percent of the women that come in to MacDonald House have some indications of toxemia, and not all require rigid treatment, but the ones that require rigid treatment are four or five percent.

Q. By the way, what is the treatment of toxemia of pregnancy?

A. Well, if we are speaking of convulsions, we give magnesia sulphate and terminate the pregnancy quickly, as quickly as possible.

Q. And absent convulsions, if you get it in an early stage, what do you do?

A. Put them in bed rest and give them magnesia sulphate and proper diet; keep them quiet, and get a larger bed, so we don't have to terminate as soon as we have — in

other words, we try to get a baby up to 37 weeks, the total being 40 weeks; but in some instances, or most instances of true toxemia, it is a progressive thing, and you have to terminate the pregnancy early.

There is one other thing, the question of partial placenta previa and complete placenta previa. This is a condition in which the implantation of the ovum is in the lower segment of the uterus, and the afterbirth is adjacent to the opening of the cervix at the birth canal, and the complete placenta previa is where the afterbirth is actually over the lower opening of the cervix.

Now, this results — as the uterus enlarges and stretches and begins to pull, hemorrhaging will occur, and these can be very, very serious complications that require medical attention.

These symptoms don't occur very frequently in the middle trimester, but they can and do.

Q. Do they occur more frequently in the third trimester?

A. Very much more so.

Q. Will you tell us, in the third trimester of pregnancy, that is, the seventh, eighth, and ninth months, about the frequency of placenta previa?

A. It is not very high. I would say — I haven't read up on any recent figures on it — but I would say it is probably, partial and complete, run about 1 to 2 percent of all pregnancies. I am not sure of these figures at the present time.

Q. I understand they were accurate the last time you checked them?

A. Yes.

Q. Now, coming to the third trimester of a pregnancy, the seventh, eighth, and ninth months; what are

some of the complications of pregnancy during the third trimester?

A. Well, there is premature labor with a premature baby occurring spontaneously for reasons we don't know.

Again, there is the toxemia of pregnancy; that is, we referred to it in the second trimester, which is more acute in the third trimester, more serious; and again the placenta previa, and the complete and partials.

Q. Are there any others?

A. Well, there are all kinds of things at the time of the delivery.

Q. Now, we talked heretofore about the complications of pregnancy. I would now like to relate those complications of pregnancy to the environment in which the pregnant lady finds herself.

First of all, what is the effect upon the mobility of a pregnant lady in the third trimester of pregnancy caused by the gain of 15 to 20 pounds of weight with the change in her center of gravity? What effect does that have on her mobility?

A. Well, that reduces her ability considerably. Her whole center of gravity changes, and her shoulders are further back, and she is subject to more backaches, and due to the weight increase she is much more awkward and can't move around as quickly as she could before.

Q. What about frequency of urination?

A. Well, there is generally a pressing on the bladder. Now, this frequently occurs, not in the early part of pregnancy, but occurs in the last trimester, and they have to go to the bathroom quite frequently to urinate.

Q. What about, sir, the effect on appetite, if any?

A. Really, in a normal individual, their appetite and food consumption remains fairly much the same; although

they do have a tendency to eat a little more than before. They have a tendency to. It is very important that they have an adequate type of diet.

Q. What kind of a diet?

A. Well, we always stress a high protein and low salt diet for a pregnant woman. Many doctors will completely ban salty food whatsoever, so that these pregnant women should be on a low-salt diet. A high-salt diet we feel does have some influence on the toxemia and increases it.

Q. Now, Doctor, let's get back a bit from the environment to, not the physiological effects of pregnancy, but the psychological effects of pregnancy on a normal healthy lady. What effects, what — first, what emotional effects occur psychologically in a pregnant lady by reason of her pregnancy?

A. I will preface my answer on that by saying that every time a new OB patient comes in I say, "You are going to get worried, and if there is something you are worried about, call me. That is the reason we have a phone."

Q. What are these worries?

A. In the early months they are worried about the probability of a miscarriage. As the pregnancy goes along they are worried about difficulties in labor and abnormalities in the children.

Q. Are these perfectly normal worries and fears for a pregnant lady to have?

A. Yes; but they vary considerably in degree in individuals. Some girls are scarcely aware of the fact they are worrying, and others will be on the phone constantly with questions about it.

Q. Now, sir, what effect does the environment in which the pregnant lady finds herself have upon her fears and worries?

A. Well, I think I can give an example of that. I am frequently called up by a girl in the last three months saying, "Is it all right for me to fly down to Florida?"

Well, if she is two weeks from term, I would say, "No," and if she is just six months along, then it would not do harm, and she could go; but they are worried about a change in environment, such as flying or traveling by car and things like that.

Now, of course, if there is evidence of complications, then you have to alter your advice in things like that.

Q. What about an environment in which the pregnant lady might be in fear of physical assault?

A. Again, I would feel that this would increase her worries considerably. I don't think there is any — we do not have any evidence as yet that worry would induce a premature labor. We know that a physical thing can; but in our knowledge that we are getting to now of the relationship of the hypothalamus and the pituitary gland, it is possible mental reactions could bring on premature labor.

Q. What effect if any would such fears have upon the pregnant lady in the performance of her duties in that atmosphere where she was afraid of an assault?

A. Well, I think she would not be able to fulfill her duties as well as if she were not pregnant.

Q. Now, sir, let's talk about actual physical trauma and its effect upon — withdraw that.

What is the effect if any of sudden, violent, physical exertion, upon a pregnant lady?

A. This could cause what we call a premature separation of the placenta, in which the afterbirth, which is attached to the inner wall of the womb, becomes separated, and you get bleeding.

Q. Is that called a placenta previa?

A. No. A placenta previa is only in the position of it.

Q. A premature separation of the placenta can be caused by a violent, physical exertion?

A. Yes, and not too violent either, oftentimes.

Q. Not too violent?

A. Not too violent.

Q. Well, what sort of a violent, physical exertion causes a premature separation?

A. A blow on the abdomen, a punch in the belly.

Q. A shoving or pushing?

A. Yes; any violent exerting motion, a change of position.

Q. And this would be with the person who theretofore had had a perfectly normal pregnancy?

A. Presumably, yes.

Q. Now, sir, what about a blow to the breast during the third trimester of a pregnancy?

A. Well, this could, depending on the degree of blow, cause hemorrhage in the breast, or it would cause difficulty in nursing the baby. Later on it might even lead to a breast abscess.

Q. By the way, I am not sure I asked you, but going back to the complications of pregnancy, absent any environmental problem, are there some Rh problems involved in the last months of a pregnancy?

A. Yes.

Q. What are those?

A. The Rh factor is a blood factor, and if the mother is Rh negative and the husband is Rh positive, she can develop antibodies in her circulatory system which go through the placenta to the baby, and when the baby is born it becomes jaundiced and can die as a result of this.

Now, we are able to measure these antibodies throughout pregnancy and we can anticipate trouble com-

ing up on this, and of course we can transfuse these babies and save many of them; but an Rh factor is a complication of the latter part of pregnancy, and oftentimes warrants terminating a pregnancy at 37 weeks instead of 40 weeks through cesarean section.

Q. And when you terminate the pregnancy you save the baby?

A. You are hoping to save the baby.

Q. Now, Doctor, I am going to ask your opinion—what we lawyers call a hypothetical question.

First, I will ask you if you have an opinion, and then if you answer that you have one, then I will ask you what your opinion is.

I ask you to assume—by the way, let me withdraw that and get to one other question.

You spoke of the worry that a pregnant lady might have, one of the three worries that she might have, and you spoke of the worry about death and losing the baby, and the worry about giving birth to a child with birth defects.

A. Yes.

Q. These are perfectly normal worries?

A. Yes.

Q. Now, if the environment in which a pregnant lady is placed places her in frequent contact and association with children who do have mental and emotional problems, although not directly related to a retardation, but mental and emotional problems of children unable to adapt themselves to their environment, what effect if any would that particular environment have on that normal fear?

A. I think it would create that fear to a certain degree in almost every individual, but again the degree would vary.

Q. Now, coming back to this expert's opinion; I ask you to assume that the City of Cleveland School Board has a regulation called "Maternity Leave," and that regulation provides, in essence, that any married teacher who becomes pregnant and desires to return to the employ of the Board at a future date may be granted a maternity leave of absence, effective not less than five months before the expected date of the normal birth of the child and continuing until not earlier than the beginning of the regular school semester which follows the child's age of three months.

A. Yes.

Q. Do I make that regulation clear to you?

A. Yes.

Q. I ask you for your opinion, Doctor—I ask you if you have an opinion, Doctor, based upon your experience and your expertise as to whether or not that regulation is a reasonable and, in your opinion, a good regulation in the interests of the pregnant school teacher in the City of Cleveland School System; having in mind the further fact, which I ask you to assume as true, that during the last school year a total of 256 assaults occurred upon teachers in the Cleveland Public School System.

And I ask you further to assume as a fact that so far during the current school year a total of 140 assaults upon teachers had occurred in the Cleveland Public School System.

Asking you to assume that those facts are true, Doctor, I ask you if you have an opinion as to the wisdom and reasonableness of the maternity leave policy of the Cleveland Board of Education. First, do you have an opinion?

A. Yes.

Q. What is your opinion?

A. I think it is a very reasonable rule.

Q. Will you tell the Court why, sir.

A. I think the reason I would say this is—now, the exact time of four months of course is a little flexible—but certainly as pregnancy goes along the chance of injury and the increased worries I feel would increase the complications of pregnancy to a certain extent.

MR. CLARKE: Thank you, sir. That is all I have.

THE COURT: Do you wish to take a recess?

MR. KATZ: Whatever is your pleasure.

THE COURT: Proceed.

CROSS-EXAMINATION OF DR. WILLIAM C. WEIR

By Mr. Katz:

Q. Doctor, you testified that at the height of your practice you were delivering 10 or 20 babies a month?

A. That is correct.

Q. I assume you were seeing 10 or 20 new pregnant women each month?

A. That is correct.

Q. Did you at that time suggest to these women, Doctor, that they take to their beds right away?

A. No.

Q. Did you suggest to them that they take to their beds at the end of the fourth month?

A. No.

Q. At the end of the fifth month?

A. No.

Q. Sixth?

A. No.

Q. Seventh?

A. No.

Q. Eighth?

A. No—now, wait. I can qualify that by saying, “Providing it was a normal pregnancy.”

Q. Providing it was a normal pregnancy. What percentage of the pregnancies are normal, in your opinion, Doctor?

A. The total fetal loss in a normal population is about anywhere between—it varies in the economic groups—between 13 and 20 percent, 130 to 200 per one thousand live births. In other words, 15 to 20 percent fetal losses.

Q. So you would say 80 to 85 percent are normal pregnancies?

A. I am speaking of fetal loss. Now, with some of these other complications you don’t always get a fetal loss; so there probably is a higher percent of complications.

Q. Would you say 70 percent of all pregnancies are normal—or 60 percent?

A. I would say probably between 60 and 70 percent can be considered entirely normal.

Q. Would I be correct, Doctor, in assuming 60 to 70 percent of your patients, during the height of your career, were undergoing normal pregnancies?

A. I would say that is correct.

Q. To your knowledge were any of them working women?

A. Yes.

Q. To your knowledge were any of them school teachers?

A. Yes.

Q. To your knowledge, sir, were any of them school teachers in the inner-city schools of Cleveland?

A. A few; a very few.

Q. Did you advise these women to stop working?

A. No. I didn't advise them to stop, because they generally stopped themselves.

Q. Would you advise them to stop working?

A. Under the present circumstances I think it would probably be a wise idea to tell them they are taking increased chances.

Q. Would you advise them to stay out of all crowds, Dr. Wier?

A. I think it depends on the type of crowd you are in.

Q. What type of restrictions do you impose upon your patients, or did you impose upon your patients when you were engaged in the general practice of obstetrics and gynecology?

A. I generally allowed my patients to lead a relatively normal life, dependent on how much they felt that they could do.

Q. In other words, Doctor, you believe that so long as it was normal, a normal pregnancy, they could make their own determinations within reason?

A. Generally speaking, yes.

Q. Did you permit your patients to swim?

A. Yes.

Q. Engage in reasonable physical activities?

A. Yes.

Q. Doctor, would you say that the bulk of the answers to the questions that Mr. Clarke asked you on direct examination had to do with the abnormal pregnancy?

MR. CLARKE: Objection.

THE COURT: Sustained.

Q. I will rephrase the question.

Doctor, is a spontaneous abortion an abnormal pregnancy?

A. Well, we don't really know, because we don't know the exact causes of them. I suggested two possibilities. Both of those would be considered abnormal.

Q. You testified on direct examination, Doctor, that a spontaneous abortion was basically due to an organic weakness in the egg; is that correct?

A. I said it was due to either a defect in the fertilized egg, or an abnormal implantation in the wall of the uterus.

Q. Then it would not be connected to the activity of the mother?

A. I didn't say that either. This could be, and there are instances of violent trauma or accidents, automobile accidents, causing a miscarriage.

Q. Would a violent trauma cause the misplacing?

A. No. It does not cause a misplacing, but it could cause the placenta to become separated and cause a miscarriage.

Q. Doctor, you said nausea was common during the first trimester?

A. That is correct.

Q. Is it common to the point that, in your opinion, all pregnant women suffer from nausea during the first trimester?

A. No.

Q. What percentage do not?

A. It varies considerably. Sometimes nausea is scarcely noticeable, and they just don't try eating certain types of foods; and others are actively vomiting; and I would say that nausea is present in well over 50 percent, probably close to three-quarters of the pregnancies, but in general

it is not a serious complication, and it disappears at the end of the three months, but it can be a serious thing.

Q. In the second trimester, Doctor, what percent of the pregnancies terminate in spontaneous labor?

A. In spontaneous labor?

Q. Yes, sir.

A. I would say that it is a relatively small percentage. The middle trimester is considered by far the safest time. The—

Q. The middle trimester—

THE COURT: Wait a minute. Let him finish his answer.

A. (Continuing)—the middle trimester, from three months to six months long. That would be 12 weeks to 28 weeks of gestation.

Q. What is the occasion of toxemia in pregnancy, Doctor?

A. As I testified before—

MR. CLARKE. Can you speak a little louder? I don't believe his Honor can hear you. I know that I can't.

A. Yes. As I said, it is roughly about 10 percent of the patients that we see at MacDonald House that have some evidence of either early or more severe symptoms of toxemia.

Q. And you testified, Doctor, didn't you, that that can generally be foreseen?

A. It can in general be anticipated, but sometimes it comes on very suddenly. In other words, we will see a patient in the office where everything is normal, and three days later she is curled up with a severe headache, and we see her, and her blood pressure has skyrocketed, and she is in trouble.

Q. What causes a toxemic pregnancy?

A. Nobody knows.

Q. If it can be foreseen through the rise of blood pressure or presence of albumin in the sugar—no—I mean, in the urine. Excuse me—

A. Not the sugar.

Q. You can prescribe to that woman, can't you, Doctor?

A. Again, it depends on the degree that it is being manifest. In other words, if her blood sugar has shot up extremely high, you hospitalize her; and if it has gone up a little, you tell her to go home and stay in bed, and you see her in a week.

Q. But you wouldn't make a general prediction for all pregnant women?

A. There are various degrees of all of these things.

Q. So, Doctor, what we are getting at, isn't it, is that each pregnancy is an individual thing and must be treated individually and separately?

THE COURT: Please ask questions. Don't tell him what you are getting at.

Q. I will rephrase it.

Doctor, would you say that each pregnancy is an individual matter?

A. Yes.

Q. And would you say that each expectant mother is a very special person who should be prescribed for individually?

A. My personal feelings are, yes.

Q. What is the occurrence, the normal occurrence of placenta previa?

A. I think I testified to that already, actually, didn't I, Charlie, at 2 or 3 percent?

Q. I believe you said 1 to 2 percent.

A. 1 to 2 percent, I believe, yes.

Q. That is not very common, is it, Doctor?

MR. CLARKE: Yes, he did.

A. No; but it can be a very serious complication of a pregnancy. It can result in the death of the mother.

Q. Can that be foreseen?

A. Not totally, no. It can come on very suddenly, with no previous signs or symptoms. It comes on as a sudden, severe hemorrhage.

Q. How do you prevent it, Doctor?

A. You can't. You have to treat it when it occurs. There is no possible prevention of it.

Q. You don't tell all of your patients to stay in bed in case it occurs?

A. No, of course not.

Q. You testified, Doctor, as to the premature separation of the placenta?

A. Correct.

Q. —which I believe you testified to was caused by physical exertion; is that correct, sir?

A. That is one of the causes of it. It can happen spontaneously, too.

Q. Could a woman who is caring for children in her home, and is pregnant, suffer from a premature separation of the placenta?

A. Of course she can. Anyone can.

Q. Doctor, you also testified to the psychological effects of pregnancy. Does the mental health of the mother affect the pregnancy?

A. Again, in general, we do not feel that this is necessarily true; however, some of the newer evidence, as I

previously testified, in regard to this hypothalamus and pituitary gland, can alter some of the hormonal balances and probably put someone into a premature labor. This is all very new experimental work, and we don't know the answers yet; but it is perfectly possible.

Q. In your opinion, Doctor, if the expectant mother is happy and content, will that contribute to her well-being and the success of her pregnancy?

A. It wouldn't stop her from complications that occur during pregnancy. The existence of these are probably on a physical basis. She would certainly be an easier patient to take care of in general, but it is not going to alter the complications that can arise.

Q. But you testified, didn't you, Doctor, that her fears may affect the well-being of her pregnancy?

A. They may. I didn't say they do.

Q. Would the converse be true; if she weren't happy, it may affect the well-being of her pregnancy?

A. I would say we don't know enough about these new experimental areas to say if the converse would be true of that.

Q. Doctor, you testified that your most current specialty is fertility problems; is that true?

A. That is correct.

Q. Wouldn't you say that your views on the care of pregnant women have been shaped by your concern for infertility or infertile women?

A. I will answer that very directly to you in this way:

That if a woman has an infertility problem and becomes pregnant, the fetal loss in her population is considerably higher than the average group, and I am concerned about them.

Q. So then the previously infertile woman requires special care?

A. She requires closer observation, but we do know that the fetal loss rates are considerably higher.

Q. Doctor, what is your connection with the University Hospitals?

A. I am on the visiting staff of the University Hospitals, MacDonald House, OB and GYN, Department of Reproductive Biology.

Q. Is it not true, Doctor, that the maternity leave policy at the University Hospitals provides for leave at the end of the seventh or eighth month in the discretion of the nurses?

A. I am not aware of that regulation.

Q. Would you say, Doctor, that a nurse might be subject to the same stresses and strains as a school teacher?

A. Not necessarily so. I think a school teacher who is dealing with so many young individuals at one time is probably under more of a strain than the nurses.

Q. Would you suggest, Doctor, that a nurse is on her feet any less time than a school teacher?

A. I am not a nurse, and I am not a school teacher, so I don't know that I could really answer that question.

Q. You certainly have worked with nurses, Doctor, haven't you?

A. Yes.

Q. Doctor, I beg your indulgence. I would like to go over one area with you again.

I think you testified on direct examination — I am sorry, Doctor, let me rephrase that.

How would you advise a working woman who is pregnant as to her continued employment?

A. I would first inquire what type of employment she was on — doing. If it involved physical activities, and in excess of what I would consider normal or potentially in

excess, I would advise her probably that she should stop working at an earlier time than somebody who was sitting entirely at a desk job.

Q. Well —

A. And —

MR. CLARKE: Excuse me, have you finished?

MR. KATZ: I am sorry.

A. (Continuing) What I was going to say is that I have had patients that worked as secretaries throughout pregnancy, and I have seen nurses that worked in the hospital going to term and practically going from the nurse's station up to the delivery room.

Now, usually the hospitals — in this situation, would put these nurses in the type of job on the hospital floor in which their physical activities were considerably reduced, and not require them to do as much; but in general I have never said to a patient, "You can't do this or that." I can only advise them.

Q. Doctor, have you treated patients who have worked through or worked beyond the end of the fourth month of their pregnancy?

A. Of course I have — many.

Q. Have you always disapproved of this?

A. No.

Q. Have you told the women to stop working?

A. I have on occasion suggested it would be a wiser thing if they discontinued work.

Q. But not always?

A. Oh, no.

MR. KATZ: No further questions, your Honor.

MR. CLARKE: No further questions.

THE COURT: That is all, Doctor. Thank you.

MR. KATZ: Your Honor, we have no further witnesses today, and we would like to resume tomorrow with the Court's leave.

THE COURT: Is there anything else you can put on, Mr. Clarke?

MR. CLARKE: The only thing is, your Honor, we had some further stipulations about the Teacher's Handbook. I think that the agreement of counsel is that we will offer the Teacher's Handbook in evidence, either as a joint exhibit, or Plaintiff's exhibit, with the understanding that everything in here is relevant; and counsel for both sides would hope to call the Court's attention to those portions of the handbook which are relevant.

MR. KATZ: A joint exhibit would be fine.

MR. CLARKE: That is agreeable. All right. Let's mark it at this time.

The only other thing we can do, your Honor, and if you wish to continue, I would be glad to read into evidence the deposition of Dr. Mark Schinnerer, the former Superintendent of Schools in the City of Cleveland, and the person who originated this rule.

THE COURT: How long would it take?

MR. CLARKE: Well, it will take more than five minutes. My guess is — this is just a guess — it is a 33-page deposition, sir.

THE COURT: It will take more than a minute a page?

MR. CLARKE: Yes, sir.

THE COURT: Well then, what else is left of the lawsuit?

MR. KATZ: Your Honor, —

THE COURT: Are you finished otherwise?

MR. KATZ: No. We have four more witnesses, one who would be taken by deposition at 4:10 this afternoon, because of her inability to make it here today at an earlier time.

THE COURT: Will you use up two more hours?

MR. KATZ: We should be through presenting our evidence by the noon hour tomorrow morning, your Honor.

THE COURT: How long will you take, Mr. Clarke?

MR. CLARKE: In addition to this deposition, we may have one or two very short witnesses. I really have to beg your Honor's indulgence. I am not quite sure.

THE COURT: What you are saying then is you would be able to finish by the end of tomorrow?

MR. CLARKE: Yes.

THE COURT: Then we get down to the question of argument, or however you are going to handle it. All right. We will take our adjournment, Mr. Rogers, until 10:00 o'clock tomorrow morning.

(Thereupon Joint Exhibit 1 was marked for identification by the Clerk.)

(Thereupon the court was adjourned.)

APRIL 20, 1971; 10:00 O'CLOCK A.M.

MR. KATZ: Your Honor, if it please the Court, we would request permission to conclude the testimony

of the witnesses before reading the deposition into the record.

THE COURT: Certainly.

MR. KATZ: The plaintiffs call Dr. Jane Kessler.

DR. JANE KESSLER, having been called as a witness on behalf of the plaintiffs, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DR. JANE KESSLER

By Mr. Katz:

Q. Dr. Kessler, state your full name and address, please.

A. Jane W. Kessler, 2697 Edgehill Road, Cleveland Heights, Ohio.

Q. What is your occupation, Dr. Kessler?

A. Professor of Psychology at Case-Western Reserve University, specializing in child psychology.

Q. How long have you been a professor at Case-Western Reserve University?

A. 13 years.

Q. Have you had any other pertinent previous work?

A. Yes. I worked as Chief Psychologist at the University Hospitals in Cleveland prior to my present employment or position.

Q. Are you currently associated with the Mental Development Clinic?

A. Yes. I am Director of the Mental Development Center at Case-Western Reserve.

Q. Tell the Court, please, Dr. Kessler, what the Mental Development Center is?

A. It is an inter-disciplinary department of the university with pediatrics, social workers, special education, speech, and psychologists, working with children who have learning disabilities or who are mentally retarded, both for diagnosis and continued treatment, working with their families, and in some instances, setting up special programs.

Q. Would you tell the Court about your formal education, Dr. Kessler.

A. It has been a long time ago. I got my Bachelor's degree at the University of Michigan, 1940, and my Master's degree at Columbia, 1941, and my Ph.D. in child psychology in 1951, at Western Reserve University.

Q. Have you served in the United States Military?

A. Yes. Between getting my Master's degree and coming back to work in 1946, I was in the hospital corps as a Lieutenant in the Naval Reserve.

Q. Are you a member of any professional organizations, Dr. Kessler?

A. Yes.

Q. Would you tell the Court what those organizations are.

A. Well, I am certified by the Ohio Psychological Association, by the American Board of Examiners and Professional Psychologists. I am a member of the American Psychological Association, the American Association on Mental Deficiencies, and the American Ortho-Psychiatric Association, and the American Association on Child Psychoanalysis, and the Council for Exceptional Children, and the National Association for the Education of Young Children.

Q. Have you had any offices in these organizations?

A. I am past president of the Ohio Psychological Association, and currently I am the National Chairman of

the Children and Youth Issues Council of the American Ortho-Psychiatric Association.

Q. What is your specialty, Dr. Kessler?

A. Child Psychology.

Q. Are you Board certified in child psychology?

A. I was certified by the American Board of Examiners in Professional Psychology, which is actually parallel to the Board certification in a medical specialty.

Q. Have you written any articles in child psychology?

A. Yes.

Q. Would you tell the Court, please, where a few of these articles were published?

A. Well, I think there are about eight articles in the Parent Teacher magazine. I have been credited with four chapters to a textbook, and have written various articles in educational journals and psychiatric journals, and I have written a textbook entitled, "Psychopathology of Childhood."

Q. When?

A. Published in 1966.

Q. Has it been widely adopted throughout the country?

A. It is now in its tenth printing.

Q. Did you tell us what your present academic rank is?

A. Professor.

MR. CLARKE: What is the name of the textbook?

THE WITNESS: Psychopathology of Childhood.

Q. Would you describe the experiences you have had in your professional capacity dealing with children?

A. Well, I used to work in the University Hospitals,

mainly with emotionally disturbed children, diagnosis and treatment.

When I accepted the post as Director of the Mental Development Center, I became more involved with children who had learning disabilities, particularly children who are mentally retarded.

Q. What age groups have you worked with?

A. From birth to about 19.

Q. In addition to working with children who are mentally retarded, have you also worked with children who are considered normal?

A. Yes; but they would have some sort of problem, of course; but they—by that, you mean normal in intelligence—definitely, yes.

Q. Yes. That is what I meant.

A. Yes.

Q. Have you worked with inner-city children?

A. Yes. Worked and—I am now working as a consultant to various Head Start programs.

Q. In your professional work, Dr. Kessler, have you become aware of the attitudes and reactions of children?

A. Yes.

Q. In your professional work have you become familiar with the educational processes of children?

A. Yes, very much involved with the education of children.

Q. And Dr. Kessler, have you become familiar with the problems of maintaining discipline in the classroom?

A. Yes, on an individual basis, and also on a general basis.

Of course, many children who have individual problems are referred to the Mental Development Center, and we try to make diagnoses and recommendations for

them, but also about two years ago I chaired a series of seminars for teachers mainly in the City of Cleveland schools to the problem of violence in the schools.

Q. Do you have an opinion with respect to the attitudes and reactions of children to pregnancy?

A. This varies, of course, with their ages.

THE COURT: The question is, do you have an opinion?

THE WITNESS: Yes.

Q. Would you tell the Court what that opinion is.

A. They are very much interested. It is a matter of very vital concern to them. Even very young children are observant and curious about it, and want to know about it.

Q. In your opinion, Doctor, is this a natural curiosity?

A. Yes.

Q. Do you have an opinion, Doctor, with respect to the reaction of the children to pregnancies?

A. Yes.

Q. Do you have an opinion, Doctor, as to whether the reaction of children to pregnancies in a classroom would cause disruption?

THE COURT: Wait a minute. You are putting a leading question.

MR. CLARKE: I would have objected, but I didn't have a chance.

THE COURT: Well, I didn't object, but you didn't object very fast.

MR. CLARKE: I didn't have a chance. I am sorry.

THE COURT: The question is stricken.

Q. Doctor, do you have an opinion as to how children would react to a pregnant teacher?

MR. CLARKE: Objection.

THE COURT: Sustained.

Q. Do you have an opinion, Doctor, whether the presence in the classroom of a pregnant teacher would have any effect upon the children?

MR. CLARKE: Objection.

THE COURT: Sustained.

Q. Doctor, do you have an opinion as to whether there is any effect upon students from different stimuli within the classroom?

MR. CLARKE: Objection.

THE COURT: Sustained.

Q. Doctor, are you familiar with the reactions of children in a classroom?

MR. CLARKE: I object to that, too.

THE COURT: Well, she already expressed some —so I will sustain the objection.

Q. Doctor, what was your position at the University Hospitals?

A. Chief Psychologist.

Q. In that capacity as Chief Psychologist did you become familiar with the maternity leave policy for nurses at the hospital?

A. No.

Q. Dr. Kessler, you are a wife and mother of one child, are you not?

A. Yes.

Q. Did you continue working during your pregnancy?

A. Yes.

Q. How long prior to the delivery of your child did you stop working?

A. I stopped working about two weeks before my child was born.

MR. KATZ: No further questions. You may cross-examine.

CROSS-EXAMINATION OF DR. JANE KESSLER

By Mr. Clarke:

Q. Doctor, to what do you attribute the current wave of violence in the school system today, among children?

A. We spent a long time on that subject, and no, I couldn't give one single factor.

Q. You have no explanation, but you know it exists? You know of the incidence of violence in the school systems throughout the United States, not just the inner-city schools, and markedly increased?

A. Yes. One factor is undoubtedly television.

Q. But whatever the reason, do you know of any other factors?

A. Discontent.

Q. Television and discontent?

A. Yes.

Q. So that today in the school systems of the United States the incidence of violence—and by “violence” that includes both attacks of students on one another and attacks of students on teachers—is increasing?

A. Yes.

Q. Isn't it fair to say that the classroom today is a more dangerous place for the teacher to be than it was five years ago?

A. I don't know the dates.

Q. Well, 10 years ago then?

A. Yes.

MR. CLARKE: I think that is all. Thank you.

MR. KATZ: Just a couple of questions.

MR. CLARKE: Just a moment, please.

(After an interval.)

MR. CLARKE: That is all I have. Thank you.

REDIRECT EXAMINATION OF DR. JANE KESSLER

By Mr. Katz:

Q. Dr. Kessler, you just testified on cross-examination that in your opinion the classroom is a more dangerous place to be than it used to. In your opinion is the classroom a more dangerous place to be than a shopping center?

THE COURT: The objection is sustained.

MR. KATZ: No further questions, your Honor.

THE COURT: You are excused, ma'am.

MR. KATZ: At this time, your Honor, the plaintiffs would call Kathryn East.

KATHRYN S. EAST, called as a witness on behalf of the plaintiff, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF KATHRYN S. EAST

By Mr. Katz:

Q. Miss East, please state your full name and address.

A. Kathryn S. East, 4212 North 32nd Street, Arlington, Virginia.

Q. Tell the Court your occupation?

A. Executive Secretary of the Citizens Advisory Council on the Status of Women and the Interdepartmental Committee on the Status of Women. I am on the payroll of the Labor Department.

Q. Mrs. East, please tell the Court your educational background.

A. I have a degree in education from Marshall University in Huntington, West Virginia, an AB degree; and I have 18 hours of law—but I don't think that is pertinent to this.

Q. How were you employed prior to becoming Executive Secretary of the Citizens Council?

A. I was Executive Secretary of the Federal Employment Committee of the President's Commission on the Status of Women. That Commission was appointed by President Kennedy in December, 1961, and made a report in October, 1963.

Q. Did you have any other pertinent previous employment?

A. Yes, sir, I think so. I was in public personnel work in the Civil Service Commission for 23 years prior to that time. Most of my experience was in general staff work. I studied subjects that were of interest to the Commissioners and prepared staff position papers for them, and in that connection also prepared executive orders for the President's signature, drafts of legislation, and testimony for the Commissioners.

Q. Thank you.

A. — and regulations to govern public personnel in the Federal Service.

Q. Fine. Thank you.

Would you tell the Court what your duties as Executive Secretary to the Citizens Council on the Status of Women are.

A. I am the Chief Executive Officer for both groups, and as such I arrange for the meetings and plan their agenda and prepare their minutes, do staff papers or arrange to have staff papers done, on the subject that they are interested in.

Q. Mrs. East, have you ever testified before in a court of law?

A. Yes, sir.

Q. In what capacity?

A. In the same capacity. I testified yesterday in Richmond in a case very similar to this.

Q. What was that capacity?

A. As an expert on the status of women.

Q. Would you tell the Court, please, Mrs. East, what the Citizens Council on the Status of Women is.

A. Well, it is a group of private citizens appointed by the President to advise the President, to advise Federal agencies, and to advise state governments, and private groups, including employers, on actions that would enhance the status of women.

Q. Who are the members of the Council?

A. You want the names of the members?

Q. Please.

THE COURT: I wish you would get down to your lawsuit.

MR. KATZ: I am trying to qualify the witness. Well, we will dispense with the reading of the names.

Q. How does the Council arrive at its policy statement, Mrs. East?

A. Various ways. We make studies based on what the Council is interested in and wants to study at the moment. I do some, and in some cases I get expert details from other parties of the Government, the Justice Department, the Health, Education and Welfare Department, and the Defense Department.

Q. Mrs. East, has the Citizens Council on the Status of Women had the occasion to consider the maternity leave policy?

A. Yes. We did very recently on two different meetings.

Q. Has the Council taken an official position?

A. Yes, sir. We adopted a policy—

MR. CLARKE: Objection.

THE COURT: Sustained and stricken. Let's get down to this lawsuit.

MR. KATZ: Your Honor, I would respectfully suggest that the position taken by other agencies—

THE COURT: You might, but let's get down to this lawsuit, sir.

Q. In your position as Executive Secretary to the Council, Mrs. East, have you had occasion to learn of the maternity leave policies of various Government agencies?

MR. CLARKE: Objection.

THE COURT: Sustained.

Q. In your position as Executive Secretary of the Council on the Status of Women, Mrs. East, have you become familiar with Executive Order No. 11246, as amended, with respect to employment discrimination by

contractors and subcontractors of the United States Government?

A. Yes, I have had.

MR. CLARKE: Objection.

THE COURT: Well, she got it in pretty fast, but it is stricken. The objection is sustained, and you wait for questions, please, Miss.

MR. KATZ: No further questions, your Honor. You may cross-examine.

MR. CLARKE: No questions, your Honor.

THE COURT: You are excused, madam.

MR. KATZ: At this time, your Honor, we request the Court's permission to read into the record the deposition taken yesterday of Dr. Sarah Marcus.

THE COURT: Do you all have copies?

MR. CLARKE: Yes, your Honor. Thank you.

THE COURT: O.K. Proceed.

MISS AGIN: "Dr. Sarah Marcus" —

THE COURT: I think you better sit up here, so I can be sure to hear you. It is hard to hear you from the table. Your voice isn't very loud.

MISS AGIN: I have a cold.

THE COURT: That is all right. I just want to make sure I am getting it. I am the only audience you have.

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**IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JO CAROL LA FLEUR,
Plaintiff,

vs.

CLEVELAND BOARD OF
EDUCATION, et. al.,
Defendants.

Civil Action
No. C 71-292

ANN ELIZABETH NELSON,
Plaintiff,

vs.

CLEVELAND BOARD OF
EDUCATION, et. al.,
Defendants.

Civil Action
No. C 71-333

Deposition of DR. SARAH MARCUS, a witness of lawful age, taken in the above captioned matters pending in the District Court of the United States for the Northern District of Ohio, Eastern Division, by agreement of counsel, before Roy Thompson, Jr., a Notary Public within and for the State of Ohio, and an Official Court Reporter for the District Court of the United States for the Northern District of Ohio, Eastern Division; in the courtroom of the Honorable James C. Connell, Room 202, U. S. Court House, Cleveland, Ohio, on April 19, 1971, at 4:15 o'clock p.m.

APPEARANCES:

On behalf of the Plaintiffs:

Carol S. Agin, Esq.

Louis Katz, Esq.

On behalf of the Defendants:

Charles F. Clarke, Esq.

Arthur A. Kola, Esq.

George W. Pring, Esq.

DR. SARAH MARCUS, of lawful age, called as a witness by the plaintiffs, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION OF DR. SARAH MARCUS

MISS AGIN: Mr. Clarke, I would like to know if you would agree to waive the signature?

MR. CLARKE: Yes.

MISS AGIN: Would you, Dr. Marcus, be willing to waive the signature? This would mean that you wouldn't have to read this record as soon as it was finished in order to sign it.

THE WITNESS: Well, I don't know.

MR. CLARKE: May I say, Dr. Marcus, that both Miss Agin and I will attest to the accuracy of the transcription as it will be done by this court reporter, and that is why I am willing to waive the signing of the deposition.

THE WITNESS: Well, all right.

MISS AGIN: All right. Thank you.

By Miss Agin:

Q. Dr. Marcus, will you please tell the Court your address.

A. 25 Prospect, or 211 Republic Building.

Q. And your occupation?

A. Physician and surgeon.

Q. Now, I would like to go into your education. Where did you go to college?

A. I obtained my A.B. degree at Western Reserve University — Case-Western Reserve now; and my medical degree at the University of Michigan.

Q. And when did you begin practice, Dr. Marcus?

A. In 1923.

Q. And since that time have you had any appointment to hospital staffs or associations?

A. Oh, well, I was associated with Mount Sinai 10 years in the Gynecology Department, and then I transferred. I still have privileges there, but I am more active at Women's Hospital, Women's General Hospital; and I am Chief of OB and GYN at that hospital, and have been for 17 years.

Q. Were you Vice-President of that hospital, the Board of that hospital?

A. I was on the Board of Trustees, and I was Vice-President since 1927, I think it was. Anyway, I was Vice-President for about 26 years, and President for 14 years; and I still am President, but I am hoping to get off the job.

Q. And were you active in Planned Parenthood of Cleveland?

A. I have been very active. I was one of the original doctors connected with Planned Parenthood when it first originated in Cleveland.

Q. What organizations have you been in, medical organizations?

A. Of course I am a member of the Academy of Medicine, Cleveland; and the Ohio State, and all the other necessary organizations connected with my profession.

Q. Did you help found a medical society in Cleveland?

A. I helped to stimulate the formation of the Women's Medical Society in Cleveland.

Q. Have you been a lecturer or teacher?

A. Well, in the early days I lectured on behalf of Planned Parenthood to church groups and school groups on education, sex education.

Q. Do you have any publications?

A. I have had some in the Women's National Medical Journal.

MISS AGIN: Mr. Clarke, I have with me a Xerox copy of an article about Dr. Marcus which appeared in the Plain Dealer, April 8th, a Thursday, which she gave to us. Are you willing that we introduce it?

THE WITNESS: That was in relationship to an announcement of my asking for me to be relieved of my presidency on the Board of Trustees, because I had served for 14 years, and I wanted to be relieved.

Q. Would you say that article is an accurate description of your history?

A. I thought it was very fair, and everybody else said it was a very honest summary of what the hospital gave them, and what the reporter asked, the questions that she asked me.

MR. CLARKE: I take it you want to offer this into evidence?

MISS AGIN: Yes; with your approval.

MR. CLARKE: Well, why don't you have it marked for identification.

(Thereupon Marcus Deposition; Plaintiffs' Exhibit No. 1, was marked for identification by the Notary Public.)

Q. Dr Marcus, would you look over this and see if it is a copy of the article which was in the Plain Dealer.

A. Yes. This is a Xerox copy, yes. There was another piece on it here (indicating), where they had me taking care of a patient, but this is a copy of the published remarks.

Q. O.K.

MR. CLARKE: Let the record show I object to those portions of the article which contain the comments by persons other than the doctor. I have no objection as to the recital of the doctor's qualifications and experiences therein.

Q. Dr. Marcus, you have been in practice since about 1923. About how many babies would you say you have delivered since 1923?

A. My father always wanted to know that, and I never kept track; but many, many, I can assure you.

Q. Would you say 1,000?

A. Yes; of course.

Q. Now, have you treated any pregnant women who worked during their pregnancy?

A. Who worked?

Q. Yes.

A. Yes; I have treated a lot of pregnant women who worked during their pregnancy.

Q. Have any of these women asked your opinion as to whether they were able to continue to work during their pregnancy?

MR. CLARKE: Show an objection to the form of the question. Why don't you just ask her if she has an opinion on that subject.

Q. Do you have an opinion as to whether pregnant women should work during their pregnancy?

A. Yes; I have an opinion that it doesn't hold true across the board for every woman, but I think it should be individualized, and that women who are pregnant can work under the supervision of their physician up until just before they are ready to go into the hospital for delivery. I did.

Q. Are you familiar with the duties of a teacher?

A. Well, I think — I never taught, except Sunday school, but I have quite a number of school teachers who are patients of mine, and patients who have been pregnant.

Q. How did you advise the school teacher patients of yours?

A. How is that?

Q. How did you advise the school teacher patients of yours?

A. Well —

MR. CLARKE: Show an objection, the same objection; but you may answer. Go ahead.

MR. CLARKE: I object to the, "How did you advise the school teacher patients of yours?"

THE COURT: Sustained as to her advice.

Q. What is your opinion when you are a school teacher?

A. Well, they come to me, and I am a very strict doctor, and I demand they come in every month, and after the seventh month they come every two weeks, and the

last month of pregnancy they come every week, or more if necessary; and I give them advice, depending on the individual patient. It is not across the board. Some can work right to the end, and some can't, depending on their condition, which varies, of course.

Q. Have you advised healthy pregnant school teachers that they can work?

A. If they so desire, yes.

Q. Are you familiar with physical activities like climbing stairs and standing?

A. Well, I do know of course they have to climb stairs, and I tell them to be careful and not run up the stairs all at one time; but there is no harm in climbing stairs. It is good activity. As a matter of fact, it keeps their muscles in good trim, and it is good for them.

Q. Do you advocate physical activity during pregnancy?

A. I sure do, unless they have complications. When I say this, I want you to remember it is not for everybody, but if there is complications, and I know about them, and they were under my supervision, I might limit this, depending on the patient's condition.

Q. Are you familiar with general housewives' chores?

A. I should say I am. I have to do some of it myself. These are hard days when you can't get hold of good housekeepers, and those chores are good active exercise; and I am sure pregnant women have to do it. They have to lift if there are other young children; and they have to do a lot of things that are very difficult physical exertion, and they get by with it very well.

Q. Would you say that the housewife's chores present as great a stress or exercise in pregnancy as teaching?

MR. CLARKE: Objection; but you may answer.

Q. I will rephrase the question. I will withdraw that question.

Do you know what the chores of teaching are?

A. Well, I wouldn't be able to say, one, two, three, four, and five; that they have this to do, but I take it for granted they are on their feet considerable, and they can sit down. There is no restrictions about them sitting down, and it is mostly a mental job rather than a physical one, as far as I know.

Q. In your opinion do the chores of housekeeping present more of a stress than the chores of teaching in pregnancy?

MR. CLARKE: Objection. You may answer.

MR. CLARKE: There is an objection to the question, your Honor.

THE COURT: She may answer.

A. Let's not put it that way. I would rather say that the chores of housework are strenuous physically, perhaps not as strenuous mentally and emotionally, but there is nothing that the teacher does as a teacher that is any more strenuous than what a pregnant mother does with housework; and her attentions with the other children, if she has any, are also strenuous.

Q. Are you familiar with the chores or routine of nursing?

A. You mean the nursing profession?

Q. Yes; the nursing profession.

A. Oh, yes. I am intimately associated with it. It is around me constantly every day, and it requires a great deal of physical exertion and also mental, but particularly physical. If a patient falls out of bed, that nurse has got to get up quickly and lift her, regardless of whether she is

pregnant or not, because she is on duty; and so it has hazards greater than teaching, I would imagine.

Q. Would you permit a patient of yours who was pregnant to continue nursing, continue the occupation of being a nurse?

A. Well, that again should be individualized. We have nurses around our hospital who work, and if they are equal to the job, and the doctor approves of it, she may stay on.

Q. How long may a nurse stay on in your hospital?

A. Well, I don't think up until this time we have any strict rules about it, but they usually quit about the seventh month; but I think they can quit sooner, depending on the doctor. If the doctor says you can't work, you can't work; but we have no across-the-board decisions to make on that matter.

Q. Have you ever given birth to children?

A. Yes, I had two pregnancies and delivered them and worked right up to the time of the delivery, almost.

Q. You answered my next three questions.

Well, let me ask you, at the time that you were pregnant, what were your duties as a doctor?

A. My duties as a doctor were exactly the same duties that I perform today.

Q. And could you elaborate?

A. Well, I get up early and go to the office, and I see patients and examine them and talk to them, and I get in and out of a car and drive all over, and go to the hospital.

I do the usual things that a doctor has to do; and when I was pregnant, with the exception of the early part of one pregnancy, where the doctor said, "No," I was too badly nauseated, and I stayed home for a few weeks; but again it was under the direction of your doc-

tor. If the doctor says work, then she works; and my doctor didn't object to my working, so I worked.

Q. What are your hours of work?

A. Pardon?

Q. What are your daily hours of work?

A. My hours of work?

Q. Or what were they when you were pregnant?

A. Well, you know I can't make that specific, because a doctor's time is a very irregular thing. Some days I work very hard and long hours, and sometimes I only put in five or six hours a day. It depends on the work load you are presented with in your job.

Q. Were you ever called for night duty?

A. Yes, during my pregnancy, and I took them.

Q. In emergencies?

A. Yes; in emergencies.

Q. Did you ever work on the weekends when you were pregnant?

A. I surely did. Doctors don't have weekends in my field.

Q. Is morning sickness a physical condition of pregnancy?

A. Yes. It is considered so.

Q. Now, what months of pregnancy is nausea most prevalent?

A. The early months of pregnancy, the first two months or three months.

Q. Is it common after the fourth month?

A. I wouldn't say common, but it could occur.

Q. When you have a patient with any type of problem pregnancy, do you advise the patient to take precautions?

A. Well, I wouldn't be a good obstetrician if I didn't. I have to keep them informed, and I am the type of physician who tries to teach and keep my patients informed, because I spend a lot of time teaching them about themselves. That was part of my job in Planned Parenthood; to teach them about themselves, and warn them what might happen and when to call me, and I give them little slips of paper stating that if there is anything, a spotting of this or that, call your doctor; and they are alerted to what to expect in the way of emergency.

In the way of — not necessarily an emergency — but something that is not quite regular, why, I might say, "Well, you better stay home."

Q. And if you had a pregnant patient with a toxic pregnancy, what would you do?

A. She won't work until I get it under control.

Q. How about with placenta previa?

A. That is an accident of pregnancy and a serious emergency, and she will go to the hospital pronto, and she will know it, because I have already informed her of the possibility of such an emergency.

Q. Would you say that the great bulk of pregnancies are normal pregnancies?

MR. CLARKE: Objection. *Dr*

MR. CLARKE: I will withdraw that objection.

A. I am sure glad they are; yes.

Q. What precautions do you advise a woman to take who is experiencing a normal pregnancy?

A. Well, the usual precautions that I start out telling them about is what to expect in a pregnancy, so she is

informed about what to expect; and from there on to stop worrying about herself and go ahead and lead a normal life.

I don't like to keep them worrying about themselves, because this creates emotional problems. I consider pregnancy a normal situation in the majority of patients.

MISS AGIN: Thank you, Dr. Marcus. No further questions.

MR. CLARKE: Just a moment, Doctor.

CROSS-EXAMINATION OF DR. SARAH MARCUS

By Mr. Clarke:

Q. How many beds are there at Women's Hospital?

A. I think we have 180 beds.

Q. I take it from this newspaper article about you that a great bulk of your work in the last few years has been in an executive capacity as President of the Women's Hospital Association?

A. That is right. That is just a part of my work.

Q. I understand that, but this article is about your retirement as President of the Women's Hospital Association. That is what brought the article about?

A. That is right.

Q. And you were Vice-President of the Women's Hospital Association for 26 years before becoming President 14 years ago; is that right?

A. That is correct. The appointment — well, go ahead.

Q. You also have been Chairman of the Executive Committee and the Board of Trustees of the Women's Hospital Association?

A. That is part of it. The Executive Committee of the Board of Trustees consists of the President and other

members, so that is normal; and the Executive Committee of the staff is an appointment by the staff.

My staff duties and my Board duties are entirely different, you know.

Q. I see; so as President of the Women's Hospital Association, were those staff duties?

A. No.

Q. What were those?

A. The President of the Association, did you say?

Q. Yes. What were the duties?

A. Those duties had to do with the financing of the hospital and administrative duties, running of the hospital, and that sort of thing.

Q. You have been in charge of that for 14 years?

A. Yes.

Q. And as Chairman of the Executive Committee and the Board of Trustees?

A. That is part of that.

Q. That was part of those responsibilities?

A. Yes.

Q. And in addition to that you had an office in the Republic Building where you examined individual patients?

A. Yes; and the date I was appointed as Chief of OB and GYN, the appointment comes from a recommendation by the staff.

Q. I understand.

Now, as I understand it, your testimony here today is that whether or not a woman should continue after she becomes pregnant depends upon the condition of the individual patient?

A. That is right.

Q. In some instances you recommend continued working, and in some instances you recommend that she stop?

A. I think so.

Q. And is this judgment essentially a medical opinion?

A. That is exactly right.

Q. And that medical opinion, the nature of the work that a pregnant woman performs, can have something to do with your medical opinion as to how long she should continue working, can it not?

A. I would put it the other way around; not the nature of the work, but the nature of the patient.

Q. Would you recommend a female patient that was working at farm labor continue working up until the term?

A. They do it.

Q. I ask you if you as a doctor today would recommend that?

A. If the patient was in good health, I would recommend it.

Q. You mean she could work out on the farm every day up until the term?

A. That is right.

Q. That is the way it used to be in the old days?

A. That is right.

Q. What was the infant mortality rate in the old days?

A. Well, it was higher, but it had nothing to do with dropping babies on the farm. That patient that was on the farm probably wasn't getting good medical care.

Q. That is right.

A. I base my idea on the patient. I individualize the patient.

Q. What about the mortality of the mothers when the babies were dropped in the field?

A. That depended on lack of care. I am talking about good medical care.

Q. So your testimony is today you have no objection on the grounds of the physical activities that a woman continue to work, who was a farm hand, right up until term?

A. If she is under my care, and under a doctor's care; yes.

Q. That is all right with you?

A. Yes; if she is equal to it physically.

Q. Well, you are the one to make that determination?

A. That is right. I do.

Q. What about working as a steel worker, where she worked on the construction of new buildings, climbing up on beams for a new steel building?

A. Well, that might be another story. She would present herself with the possibility of an accident which I wouldn't approve of.

Q. Why is that so?

A. Because it is hazardous, even for men.

Q. In what respect?

A. They slip in the construction business. I watched them through the window falling off the Terminal Tower one time, and when they got to the bottom, they weren't alive. Construction is a dangerous business. I wouldn't expect my pregnant mother to be a construction worker.

Q. You mean whether she was pregnant or not?

A. That is right.

Q. So you wouldn't recommend any woman working in construction work?

A. Well, particularly so if she is pregnant.

Q. Why is that? What difference does it make?

A. If she falls she will have a miscarriage and hurt herself, and the baby too.

Q. Would it make any difference if she is in the eighth term and gained 20 pounds, and changed her center of gravity?

A. If she gained 20 pounds she hasn't been under care.

Q. That is your opinion? 20 pounds is too much to gain?

A. Well, we allow them up to 18 or 20, but not too much more, but if she is careful, unless she is suffering from hypertension or kidney infection or some other reason, she shouldn't suffer from dizziness.

Q. Well, how about the effect of the fetus, the growing fetus, in changing the woman's center of gravity? Doesn't that occur?

A. The fetus changes the woman's center of gravity?

Q. Yes.

A. I am not cognizant of any.

Q. You don't think it does?

A. Well, my patients have never complained about it to me, if it does.

Q. As far as you are concerned the woman's center of gravity doesn't change during the eighth or ninth month of pregnancy?

A. No. She wears a garment, and she adjusts gradually to that change.

Q. How about the frequency of urination during the eighth or ninth month of pregnancy?

A. Unless there is some infection in the bladder, there is nothing to disturb her in that respect, and if she has, she has to be checked by a doctor and cared for.

Q. So it is your testimony here today that in the normal pregnancy there is no increase in the frequency of urination during the last month of pregnancy? Is that your testimony?

A. Well, not a disturbing point. My patients haven't complained about it to a disturbing point, unless they have an infected bladder.

Q. I am talking about the normal pregnancy. Is there or is there not an increase in the incidence of urination for the last month of pregnancy in the normal pregnant woman?

A. I can only answer by saying they have never complained to me that that was a disturbing factor in their condition.

Q. So that is something that never attracted your attention in all your years of practice; is that right?

A. Not unless there was infection.

Q. All right. I am not talking about infection. How about strenuous physical exercise during the third trimester of a pregnancy?

A. You mean the last three months?

Q. Yes. Don't you call it a "trimester" — during the last trimester of the pregnancy. I am talking about the last trimester of the pregnancy.

A. Strenuous, physical exertion?

Q. Strenuous, sudden, physical exertion.

A. I wouldn't expect my patients to do strenuous, sudden — and I am emphasizing the "sudden" — physical exertion.

Q. Suppose a patient were exposed to strenuous, sudden, physical exertion during the last three months of a pregnancy. What effect if any would that have on the pregnancy?

A. Well, in a normal pregnancy the chances are that it will have no effect, but I wouldn't want to say it never would. That wouldn't be right.

Q. Actually, while a pregnant woman in the last trimester of her pregnancy — withdraw that.

A pregnant woman in the last trimester of the pregnancy is not as agile at maneuvering around as a non-pregnant woman, is she?

A. I can't generalize that. Some who are obese certainly won't be as agile as a patient who is not obese. That can't be generalized.

Q. Come on now, Doctor; do you mean to tell me that — withdraw that.

Isn't it a fact that every single pregnant woman, eight to nine months pregnant, carrying a fetus that is a normal growth, and who has gained normally from 15 to 18 pounds, is not as agile as a non-pregnant woman?

A. Well, I think that is stretching a point.

Q. I asked you for your opinion, professionally. Do you have an opinion? Do you have an answer?

A. I would say perhaps she is not as agile.

Q. So your answer is that she is not as agile; is that correct?

A. Yes.

Q. Now, you have testified that there is nothing that a teacher does as a teacher that is any more strenuous than the housewife does; is that right?

A. In my opinion.

Q. That is your opinion, based upon your knowledge of teaching and your knowledge of being a housewife?

A. Yes.

Q. Have you ever taught as a teacher other than Sunday School?

A. No.

Q. Excluding Sunday School?

A. No.

Q. Have you been in any of the junior or senior, or for that matter, elementary schools in the City of Cleveland within the last three or four years?

A. No. My son has been out of school, so I haven't been connected with it in the last three or four years.

I used to go to school and see what was going on when he was going to school.

Q. How old is your son?

A. 40.

Q. Now, as far as pregnant nurses are concerned, the pregnant nurse you are talking about works in a hospital environment, doesn't she?

A. That is what I am talking about, because that is all I know about.

Q. You are talking about the nurse who has got the doctor just down at the end of the hall?

A. Pardon?

Q. The pregnant nurse on duty in the hospital.

A. That is right.

Q. Who has available, if she needs it, all the facilities of that hospital?

A. That is right.

MR. CLARKE: Excuse me just a minute.

THE WITNESS: Surely.

MR. CLARKE: Doctor, I guess that is all. Thank you very much.

MR. KATZ: One moment, please.

REDIRECT EXAMINATION OF DR. SARAH MARCUS

By Miss Agin:

Q. Dr. Marcus, in your hospital are pregnant nurses given lighter responsibilities and duties?

A. Well, I am not the nursing supervisor, and I am afraid I can't answer that question.

Q. Are you in active practice now?

A. Am I in active practice—too active.

Q. And why were you late today?

A. Pardon?

Q. Why were you late today?

A. Well, I had an emergency operation.

Q. So that—

A. You mean late in coming here?

Q. Yes.

A. I didn't get back to the office. I was called away on an emergency.

MISS AGIN: That is all. Thank you, Doctor.

MR. CLARKE: Doctor, just one question.

RECROSS-EXAMINATION OF DR. SARAH MARCUS

By Mr. Clarke:

Q. What kind of an emergency operation was it?

A. Well, it was an emergency operation.

Q. Did it involve a pregnancy?

A. Yes, it did.

Q. Would you tell the Court what it was, what the operation today was, bearing in mind the physician-patient privilege. I am not asking you to disclose anything other than just tell us in general the nature of the emergency.

A. Post partum; a post delivery hemorrhage.

Q. After delivery?

A. Yes.

Q. I see.

How long after delivery?

A. Two or three hours after delivery.

Q. Those are one of the complications?

A. Yes.

Q. Those are one of the complications of pregnancy, a post partum hemorrhage, two or three hours after delivery while the patient was still under medical care?

A. Yes.

MR. CLARKE: That is all. Thank you.

MR. KATZ: We have no further questions.

(Thereupon at 4:55 p.m., the deposition of Dr. Sarah Marcus came to a close.)

CERTIFICATE

THE STATE OF OHIO,)
) ss:
COUNTY OF CUYAHOGA)

I, Roy Thompson, Jr., an Official Court Reporter for the District Court of the United States, for the Northern District of Ohio, Eastern Division, and a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, DR. SARAH MARCUS, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; that the testimony then given by her was reduced by me by stenotypy in the presence of said witness, subsequently transcribed into typewriting under my direction, and that the foregoing is a true and correct transcript of the testimony so given by her as aforesaid; and that the witness, DR. SARAH MARCUS, expressly waived signature to the deposition.

I do further certify that this deposition was taken at the time and place as specified in the foregoing caption.

I do further certify that I am not a relative, counsel, or attorney of either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, this 19th day of April, 1971.

Signed, Roy Thompson, Jr., Notary Public In and For the State of Ohio, and Official Court Reporter for the U. S. District Court.

"My commission expires March 13, 1973."

MR. KATZ: Your Honor, at this time the plaintiff would request a short recess.

THE COURT: All right. Five-minute recess.
(Recess taken.)

THE COURT: Please be seated. Proceed.

MR. KATZ: Your Honor, the plaintiffs rest.

MR. CLARKE: At this time, your Honor, the defendant would like to read into the record the deposition of Dr. Mark Schinnerer.

THE COURT: Go right ahead. Do I have our copy, Barney?

THE CLERK: Yes, you have it right there.

THE COURT: O.K.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Jo Carol La Fleur,

Plaintiff,

vs.

Cleveland Board of Education, et al.,

Defendants.

No C71-292

Ann Elizabeth Nelson,

Plaintiff,

vs.

Cleveland Board of Education, et al.,

Defendants.

No. C71-333

Deposition of DR. MARK C. SCHINNERER, taken before Dennis W. Hagestrom, a Certified Shorthand Reporter and Notary Public within and for the State of Ohio, at the offices of Squire, Sanders & Dempsey, 1800 Union Commerce Building, Cleveland, Ohio, at 11:30 A.M., Tuesday, April 13, 1971, pursuant to notice and stipulations of counsel, on behalf of the defendants in this cause.

APPEARANCES:

Miss Carol S. Agin and
Mr. Lewis R. Katz,

On behalf of the Plaintiff;

Squire, Sanders & Dempsey, by
Mr. Charles F. Clarke and
Mr. Arthur A. Kola,

On behalf of the Defendants.

DR. MARK C. SCHINNERER, of lawful age,
called by the defendants for the purpose of direct examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION OF DR. MARK SCHINNERER

By Mr. Clarke:

MR. CLARKE: Let the record show that this deposition is being taken pursuant to notice and by agreement of counsel, and that the deposition is being taken by the defendants to be offered in evidence at the hearing on both the case of Jo Carol La Fleur and the case of Ann Elizabeth Nelson, which hearing has been set for April 19, 1971.

Let the record further show that all requirements as to the manner and method of taking the deposition, the notice thereof and the signature thereof are waived. Is that agreeable?

MISS AGIN: Yes.

MR. CLARKE: Put it in both cases.

Q. Dr. Schinnerer, these actions are pending in Federal Court. Counsel for both sides have agreed to waive

the requirement of the signature of the witness. However, in Federal Court the witness himself has the right to waive the signature. That is to say, both Miss Agin and I have confidence in the accuracy of the transcription by Mr. Hagestrom, and we are willing to waive your signature. Are you also willing to waive your signature?

A. Yes.

Q. Thank you, sir. Will you tell the Court your name, please, sir?

A. Mark C. Schinnerer.

Q. Where do you live, sir?

A. 1489 Bunts Road, Lakewood.

Q. What is your present profession or occupation?

A. I am unemployed.

Q. How old are you?

A. I am retired.

Q. I see. How old are you, sir?

A. Well, I will be 72 in June.

Q. Sir, will you tell us something about your formal education, high school, college, and professional school, if any?

A. Well, after high school I went to Indiana State University for a Bachelor's Degree, then to Columbia University for a Master's Degree, and I then finally got my Ph.D. from Western Reserve University.

Q. What was your field?

A. Educational administration.

Q. Do you have any honorary degrees, doctor?

A. I have a Doctor of Laws' Degree from Oberlin College.

Q. Will you tell us something now about your professional career after the completion of your formal education?

A. Well, my professional career was sort of interspersed with my formal education.

After the A.B. I went to Rockville, Indiana, as a coach and high school principal. That is odd that I become high school principal right out of college, but they wanted me to coach and they had to make me principal so they could afford me.

I stayed there two years, and three of us decided to shake the dust of Indiana off our feet and went to New York to seek our fortune. I went into Education at Columbia University and one of the boys went into Law at Columbia and the third one, who was the most successful of the three of us, went into business and became head of the Clark Estates in New York. I think his principal claim to fame is that he founded the Baseball Hall of Fame at Cooperstown.

Q. Is that so.

A. Following the year in New York, where I received a Master's from Columbia, I came to Cleveland in 1923 and became the assistant principal of the then Thomas Boys School, later the Thomas A. Edison school for boys. I was there four years, and they took me to headquarters and put me in the Research Department as an assistant for one year. After that I became principal of Kennard Junior High School on East 46th Street.

From there I went to Thomas Jefferson Junior High School on West 46th Street.

Following that I became Director of Adult Education in the Cleveland Public Schools.

And I became Assistant Superintendent of Schools, in charge of the junior high schools.

In 1946 I became the Deputy Superintendent of Schools, in charge of elementary education, and in 1947 I became Superintendent.

Voluntarily retired in 1961, after 14 years in the superintendency. I had three years to go on a contract when I asked to be released.

Q. You asked to be released yourself?

A. Yes, I did. There was no lynching party out at the time.

Q. Now, sir, subsequent to your retirement from the Cleveland Public Schools after almost 40 years of service, what, if anything, did you then do?

A. I ran for the Legislature.

Q. Were you elected?

A. Yes.

Q. How many terms did you serve in the Ohio Legislature?

A. Three terms.

Q. Did you have anything to do with education while you served in the Ohio Legislature?

A. Oh, a great deal. I sponsored the bill, basically, which created Cleveland State University. I was the Chairman of the Education Committee the last term I was there.

Q. In addition to your work in the Legislature since your retirement, have you done any work in a consulting capacity regarding education?

A. Yes.

Q. Will you tell us what that is?

A. Commissioner Allen, of the Board of Regents in New York State, asked me to go into New York City and

make a report on that school system. There had been some scandals. Asked me to make a report on the school system for the Regents and the Legislature, to tell them what ought to be done; which I did.

Subsequently I became a special consultant to the U. S. Office of Education, special reference to urban education, and in the process I set up a national conference of large city representatives on education. Large city superintendents.

Subsequent to that the Los Angeles Board of Education employed me as a special consultant to make a complete study of their salary schedules and to recommend schedules and salaries on every position in the school system; which I did.

Q. You mentioned the conference of large city schools' superintendents. Did you ever serve in any capacity with that?

A. When I retired I was Chairman of the conference of the large city school superintendents.

Q. That is for the entire United States?

A. Yes. That conference met twice a year, three days each time, in various cities in the United States, where we discussed our mutual problems.

Q. Have you received any particular awards of merit from school authorities?

A. Well, I suppose the most significant one that I received is the distinguished service award of the American Association of School Administrators. That is the large national organization of school administrators. Mostly school superintendents.

Q. Sir, I have advised you that this case is set for hearing on April 19, 1971, and you have advised me that you would be out of the City at that time. Will you tell the Court where you will be?

A. Yes. I regret that there is this conflict. About three months ago—I am a part of the Martha Holden Jennings Foundation. I set up a state conference on elementary and secondary education and that conference will be held next Monday and Tuesday, the 19th and 20th, in Columbus. There will probably be a thousand or twelve hundred people there, and I just think I should be there since I started it.

Q. You feel that it is essential that you be there, and for that reason will be unable to be in court?

A. That is so.

Q. Very well, sir. During your tenure as Superintendent of the Cleveland City School District, can you tell me approximately how many students were enrolled under you, both at the beginning and at the end? Just an approximation.

A. Well, there were around 100,000 when I started, and we grew up to about 135, - or 140,000 in the 14 years I was Superintendent.

Q. Can you give me any estimate as to the number of teachers, approximately, under your jurisdiction at that time or during that period of time?

A. Around 4,000.

Q. About an average annual teacher membership of about 4,000?

A. Well, it grew as the population, the school population grew, and I think at the end it was a little over 4,000. Those are classroom teachers, you understand.

Q. Yes, I understand, sir. I direct your attention to the Teacher's Handbook of the Cleveland Public School, and on page 20 there appears a section entitled "Maternity Leave."

Will you explain to the Court what, if any, familiarity you have with that particular provision? That

is, do you know where it came from and anything about its history?

A. Yes. It came from me.

Q. Will you explain?

A. I recommended this to the Board of Education at that time. Now, this is not the exact language. It has been changed since then.

Q. I understand that you say at that time. Of what time are you speaking?

A. Early fifties.

Q. Prior to some time in the early fifties had there been any rule on maternity leave?

A. None.

Q. Did there come a time then when you recommended a rule on maternity leave to the Board of Education?

A. Right.

Q. Was the rule substantially similar to that rule as it now appears?

A. Substantially. There have been a few changes in it. I will give you an example.

Q. Yes.

A. Would you like that?

Q. Please, sir.

A. My original rule, that the Board approved, said that the teacher could return from the leave-of-absence at the beginning of a semester following the age of six months of the child. I see that that has been changed to three months.

Q. Other than that are there any significant changes in the rule, as you recall?

A. I don't think there are any significant changes.

Q. Sir, will you tell the Court the circumstances leading up to your making the recommendation that this maternity leave rule be adopted? What brought it about?

A. Well, we had some very embarrassing situations develop where women, who were pregnant, would stay too long in the classroom, and the result was that those teachers were subjected to humiliations, indignities on the part of pupils, generally, who giggled about it, and it was embarrassing to the teacher and it was also disruptive of the classroom.

Q. You said staying too long. Would you explain what you mean?

A. Too close to the birth of the child.

Q. Too close to the end of the term?

A. Yes.

Q. What effect, if any, did that have on the teacher's physical appearance, in so far as the children were concerned?

A. Well, pregnant women develop the sign of pregnancy.

Q. What effect did that have on the children?

A. Well, this is what they were giggling about and this is what they were making snide remarks about.

Q. How did the fact that—

A. I think it was embarrassing to the teacher and a form of cruelty.

Q. How did the fact that the snide remarks and cruelties were taking place come to your attention, if you recall?

A. Oh, through reports from members of the staff.

Q. Was there one instance or more than one instance of this?

A. Many, but I wouldn't be able to tell you how many.

Q. I'm not asking you to document them, but were there many incidents?

A. Oh, yes. You see, the teaching staff at that time was about 75 percent female, and so you would have this incident that the ages—they were young. Most of them were within child-bearing range, and this was just a natural result of marriage.

Q. Do I understand you to say then that these reports came to you of many instances and it was these reports that made up your mind to suggest this rule to the Board of Education?

A. Yes. We thought that we would have to do something to prevent the continuance of the condition that was existent.

Q. Sir, you have stated to the Court your experience and qualifications in the field of education and in the field of school administration and my question to you now is I am going to ask you if you have an opinion, as a qualified expert in the field of education, as to the present validity and desirability or lack of it of the maternity leave rule as it presently appears in this pamphlet? First of all, do you have an opinion?

A. Yes, I have.

Q. What is your opinion, sir?

A. I think it is a good rule.

Q. Will you tell the Court why you think it is a good rule?

A. Because it protects the teachers and it protects the continuity of the classroom program from the things that—

Q. In your opinion—excuse me, sir. Did you finish?

A. —that happen. Things that happen.

Q. In your opinion does this rule prevent disruptions in the educational process?

A. Does this rule prevent—

Q. Prevent disruption?

A. Yes, I think so.

Q. After the enactment of the rule, were there any protests from anyone that you recall?

A. Been a long time, but I remember none that came to my attention.

Q. Were there any teachers' unions at that time?

A. Well, we had a teachers' union and we had an education association. One was labor affiliated. One was O.E.A. affiliated.

Q. Will you identify them by name, please, sir?

A. The Cleveland Federation of Teachers, that was the union affiliate, and the Cleveland Education Association was the O.E.A. affiliate.

Q. Did either of those associations protest the maternity leave rule at any time, to your knowledge?

A. Not to my knowledge. It didn't come to my attention certainly.

Q. Would it have come to your attention had formal protests been made?

A. Formal protests, yes.

Q. Did any complaints come from the Parent-Teachers Association?

A. Not to my knowledge.

Q. When this was submitted to the Board of Education, was there a written submission or was it just an oral submission, if you recall?

A. Oh, no. The rule was presented with the recommendation for its adoption.

Q. Was your recommendation in writing, as you recall?

A. I presume it became a part of the record of the proceedings of the Board of Education.

Q. Do you have any records of your own?

A. I don't have any, no.

Q. Do you recall whether the action of the Board of Education at that time was unanimous or not?

A. As I recall, it was unanimous.

Q. Was that action taken at a public meeting?

A. Oh, yes.

Q. To your recollection was a full detail given by you to the Board as to the reasons for—

A. I gave them the reasons for requiring the adoption of the rule.

Q. And are those the reasons substantially?

A. Those are the reasons I have given you today.

Q. Thank you, sir.

MR. CLARKE: Bear with me for a moment, please.

Q. Is there any particular reason why four months was chosen as what might be described as the cut-off date in this maternity leave rule?

A. Well, it was about a halfway point and it was at that point when the physical appearance begins to change.

MR. CLARKE: Your witness.

MR. KATZ: Thank you.

CROSS-EXAMINATION OF DR. MARK C. SCHINNERER

By Mr. Katz:

Q. Dr. Schinnerer, you answered Mr. Clarke's question that the basic reason for the rule was to prevent the continuance of the condition, and I think you meant the condition of the indignities to teachers. Would you want to elaborate upon that at all?

A. Well, pointing, giggling, laughing, remarks, plus the consequent interruption, interference with the classroom activity as a result.

Q. Did the teachers complain about this condition to you?

A. I'm not sure I understand the question.

Q. Were the complaints and reports of the interruptions and the giggling and the snide remarks communicated to you from teachers at any time during—

A. No. From the principals.

Q. Would you ever make an exception during this period, during the period that you were Superintendent of the Schools? Were there any exceptions made, to your knowledge, to permit a teacher to continue?

A. No. The only exceptions that would occur would be those in which the teacher would not report the fact. We were not aware of the fact because she didn't let us know.

Q. At the time that you were Superintendent of Schools were there any pregnant students or students whom you knew or your principals knew to be pregnant in the school system?

A. Yes, sir.

Q. And were they permitted to continue as long as they could?

A. No.

Q. What was the rule with regard to pregnant students?

A. We had no written rule. We thought it was a matter of propriety, and it was discussed with the parents and the child. The girl would then be withdrawn until a subsequent date, and, if returned, returned probably to another school. Not the same one.

Q. What was the incidence of pregnancy amongst students in those days? Any idea?

A. I don't remember.

Q. Was it a common thing?

A. In some schools more common than in others. I was in a school as a principal—and I am probably volun-

teering information here that you don't need. I was principal of a school in which there was a much higher incidence of this than in the subsequent school where I was principal.

Q. Were these students the subject of snide remarks indignities and humiliation?

A. Occasionally, but really the greatest difficulty was the students, with girl fights.

MR. CLARKE: You say the greatest difficulty with the student was —

A. Was girl fights, where the student who was pregnant would get into a fight with another girl. Not often could we determine the base, but I thought — I always concluded that there must have been some jealousies present because of maybe the boy who was in the background.

Q. I see. At the time that you were Superintendent and this policy was adopted, was there any rule with regards to maternity leave for teachers who had been employed for a period of less than five years or two years or one year?

A. Didn't make any difference.

Q. The maternity leave was applicable to all teachers?

A. Yes.

Q. At the time you recommended this to the Board, I gather you had already been active in national associations. Did you make an effort to find out how other cities were handling this problem?

A. I don't think we made any such investigation.

Q. In your capacity as consultant to the New York State Board of Regents, which I believe is subsequent to your leaving the superintendency—

A. Yes.

Q. And you did a report to the New York City schools. Did you at that time become familiar with the policy they might have with respect to pregnancy amongst the teachers?

A. No.

Q. Did you have occasion to learn of that when you were serving as consultant to the Los Angeles school system?

A. No.

Q. Did you have any occasion to look into this matter or to learn of this matter with respect to other school systems when you were with the U. S. Office of Education?

A. No.

Q. Prior to the adoption of this rule in, you said, the early fifties, there was no maternity leave policy whatsoever?

A. We granted maternity leave, but we didn't have a rule that said they had to do it.

Q. I see. And did your office ever suggest to a teacher that she leave prior to the adoption of this rule?

A. Indeed so.

Q. And what was the reaction of the teachers?

A. Sometimes yes and sometimes no.

Q. I see.

A. If it had always been yes, you see, you wouldn't have needed a rule.

Q. Right. Prior to the adoption of this rule did you have a nonmaternity general leave-of-absence rule?

A. Yes.

Q. Am I not correct that that rule provides an opportunity for the School Board to grant the leave even without the request of the teacher?

A. That would mean the granting of an involuntary leave?

Q. That's right.

A. I know of no instance of that kind.

Q. I see.

A. There might have been an exception or so in the matter of military leave, a leave-of-absence for military service.

Q. But that would normally be requested?

A. He would have been so busy getting out that he wouldn't have time or wouldn't think of asking for a leave. The result was we would just automatically put him on leave.

Q. With respect to teachers with other physical conditions or physical disabilities, how would you handle leaves for them?

A. Well, would you be specific? Give me an instance.

Q. If in your opinion a teacher, for instance, suffering from a heart condition was unable to perform satisfactorily in the classroom, how would you have handled that matter?

A. Personal contact with some staff member doing it or talking to the teacher's doctor, seeing what he would recommend, and then in case he recommended, we would ask him to advise his patient to save his own life.

Q. And if the teacher was unwilling to act and yet his performance in the classroom continued to suffer, would you then take action?

A. We would have to take action in that case.

Q. What type of action would you have taken?

A. Well, it would probably have been — never had a case. Probably would have been a dismissal action.

Q. And you never had occasion to do that with a pregnant teacher either prior to the adoption of this rule?

A. I'm trying to make a connection.

Q. I am sorry. Prior to the adoption of this rule, if a teacher refused to withdraw and seek a leave-of-absence, what action would you take?

A. I never had a case where I had to take action.

Q. O.K. Are you suggesting by that, sir, that the teachers generally acceded to your suggestion?

A. I am suggesting that some did and some didn't. I never had a case where the child was born in the classroom. It became awfully close a few times.

Q. In the case of the teacher who was unwilling to voluntarily seek this leave, would you then just permit her to continue teaching?

A. We had really no alternative unless we could get the doctor to advise it. That's why I would have the rule adopted, to handle those who said, "No."

Q. You said earlier that one of the purposes of this rule was to prevent the disruption of the educational process. Prior to the adoption of this rule how would you prevent the disruption of the educational process in the face of a teacher's unwillingness to seek a leave-of-absence because of reasons of pregnancy?

A. There wasn't much we could do about it. That's why we had to do this.

MR. CLARKE: I take it by "do this," you mean adopt the rule?

THE WITNESS: Adopt the rule.

MR. CLARKE: Excuse me.

Q. You never prior to the adoption of this rule sought to dismiss a teacher who was pregnant because of the disruption of the educational process?

A. No, I didn't. I had one case whose name I don't remember, but she was — about every 15, 18 months she would have to take a leave-of-absence because she was going to have another baby. The babies were piling up and I thought there were a lot of little children who needed her more than we needed her, and I urged her to withdraw. As I remember it, she did. She was really a good teacher, able, attractive, but her interest was in rearing a family instead of teaching school.

Q. Dr. Schinnerer, in your opinion, did pregnancy always result in the disruption of the classroom?

A. I would have to qualify my answer by saying that it didn't always do it in the elementary level, but it was very nearly always at the secondary level that it did. Adolescents had a different point of view than the pre-adolescents.

Q. Were all pregnancies reported to your office?

A. No.

Q. Did you have a policy at that time for principals when they became aware that a teacher was pregnant, to report it to your office?

A. She would be reported to the assistant superintendent. See, the superintendent cannot handle all the detail. That's why he has a staff. Only the tough cases got to my desk.

Q. I see.

A. Those were the cases they couldn't handle at a lower level, and I never had an easy case. All the tough ones came to me.

Q. So then the rule was based upon those cases which came to your attention?

A. No. It was based upon advice and counsel of my associates too.

Q. Who was the assistant superintendent at that time, do you recall?

A. Well, there were four of them.

Q. Do you recall which one would have received the communication from the principals as to pregnancy?

A. Three of the four would.

Q. I see.

A. Because they were divided this way: One was in charge of elementary education. One was in charge of secondary education. One was in charge of special education. And the fourth one was in charge of what I would call research and development, curriculum and so forth.

Q. Is it possible for you to recall who the three were?

A. I think McCormick probably was the assistant superintendent for secondary schools, Levenson for elementary schools, Fintz for special schools, and Ritchie for research and development, curriculum. I may have slipped on one of them, but I don't remember names two days away now.

Q. Neither do I.

A. It's 19 years.

Q. Dr. Schinnerer, can you possibly recall back and describe to us some particular instances of disruption which led you to believe that this rule was wise and necessary?

A. I think that would be stretching my memory a bit too far.

Q. Would you consider a change in teachers in the middle of a semester or a term a disruption of the classroom?

A. Yes, indeed, and that is why I, in the rule, wrote in that the teacher could return at the beginning of a semester, after the six months age of the child, which has now been changed to the three months. I see, in this

rule. Now, I had a twofold reason for that. One was so that it wouldn't be a second break. A second class wouldn't have the disruption of changing teachers in the middle of the semester. And the other was that I am a strong believer that young children ought to have the mother there. I think much of the difficulties we have in this country come from the fact that parents have neglected, and it is very important that they be there for the love and tender care of the babies. If that is a lecture —

Q. That's fine. That's quite all right. How serious would be the disruption of changing teachers in the middle of a semester?

A. Well, it generally takes some time for the teacher to get acquainted with the youngsters. She wouldn't know what has happened in the curriculum to date except in a general way. And I think there would be a loss perhaps of two or three weeks in the continuity of the educational program.

This happens, certainly, when a teacher leaves any time or when a teacher dies or when a teacher goes into the military, is drafted into the military service, although I think they are getting more reasonable in doing it now at the end of a semester instead of half way.

Q. Do you happen to recall any difficulties in obtaining replacements, teachers in the middle of semesters?

A. Generally just fill in with a substitute. Those were the days of teacher shortages. It's a far cry from today when there are a hundred thousand teachers looking for jobs.

Q. In the case of extreme teacher shortage, would you ever have continued on a pregnant teacher who had reached the four-month period until a suitable replacement could be found?

A. No.

Q. Doctor, with your extensive experience in education and dealing with young people for over 40 years, I would consider you an expert on young people and changing attitudes of young people. What was the reaction of children in school in the forties, up until the adoption of this rule, to pregnancy? Do you have an opinion on that?

A. Well, the reaction was, in general, "See what's happened to her." It is a giggling piece. Children can be very cruel too. And I think it took a brave teacher to stay almost to the date of the birth, just as it took a brave teacher to face some of the discipline problems that are in the schools. It takes a brave teacher today to stay on the job in some of the schools in this system where assaults on teachers are now approaching 300 a year. That's why they refer to the pay as combat pay.

Q. Do you think that the attitude of young people towards pregnancy has changed in the subsequent twenty years?

A. I don't know.

Q. Do you think, in your opinion as an expert, that there could be any healthy benefits gained for children in the school system to see a married woman, who is pregnant, able to retain her position until the time she feels it is necessary to withdraw?

A. Would you restate the question?

(The last question was read by the Notary.)

A. I think not.

Q. Would you explain your answer?

A. Well, I just don't think it is a matter of producing a healthy environment. The fact that the woman is pregnant and goes ahead to teach, I don't think she probably would teach as well if she didn't have that natural thing. And I am glad that we still do have pregnant women in

this country. You may have too many, but we have some, should have some.

Q. Do you think that there is any difference in reaction on the part of children to a married pregnant teacher and to an unmarried pregnant student?

A. An unmarried pregnant student?

Q. Yes, sir.

A. It's difficult for me to put them in the same focus. I wouldn't be able to answer that question on the basis of difference of their point of view in looking at the two instances you have cited. There may be, but I don't know what it is.

Q. Did you ever consider the adoption of a rule similar to the teacher rule with respect to pregnancy amongst students?

A. No. I did consider it one time, the possibility of setting up a special class or a special area for all the pregnant — where all the pregnant girls would go and continue their education until it became too late. But then when I thought about that further, I thought that everybody would point to that school as the pregnant school, which I didn't think would be good for the kids' welfare.

Q. But subsequent to that, then, you never considered the adoption of a rule to exclude pregnant students who were showing?

A. No. We have the authority in law to suspend them.

Q. What was the practice during your period?

A. Suspending them.

Q. At what point in the pregnancy?

A. When it was obvious, apparent. And it is a strange thing. I am volunteering something now you may not want. You first noticed it in their attitude, in their behavior before you noticed it in their physical being.

Q. You are referring to students?

A. To the students.

Q. Would you want to elaborate, sir?

A. Well, I think I did a while ago when I referred to girl fights.

Q. Sir, are you familiar with the regulation of the Cleveland Board of Education which does not permit the school to suspend pregnant students at this time?

A. No, I am not.

Q. No such regulation was adopted during the period you were superintendent?

A. No.

MR. KATZ: I think that's all. Thank you.

REDIRECT EXAMINATION OF DR. MARK C. SCHINNERER

By Mr. Clarke:

Q. Dr. Schinnerer, I think you were asked on cross-examination if you recall any specific incidents prior to the adoption of this rule. Now may I attempt to refresh your recollection — or am I in error? When I talked to you before your deposition today, do I recall an incident involving children taking bets in class or is that — will you please tell me if that is an instance that you recall?

A. I recall the incident, a report, but I don't remember the case.

Q. Will you just tell us in general what it was?

A. Well, this thing was so far advanced —

Q. You mean the woman's pregnancy, the teacher's pregnancy was so far advanced?

A. That's right. It was reported that the children in the classroom, in the junior high school, were taking bets on whether the baby would be born in the classroom or in the hall.

Q. This was actually reported to you as an instance, but you don't recall the specific details or the teacher's name?

A. I wouldn't recall the case.

MR. CLARKE: Well, that is all I have.

MR. KATZ: I think that's all.

MR. CLARKE: Thank you very much, doctor. I appreciate your being here.

(Signature waived.)

C E R T I F I C A T E

The State of Ohio,)
County of Cuyahoga.) ss:

I, Dennis W. Hagestrom, a Certified Shorthand Reporter and Notary Public within and for the State aforesaid, duly commissioned and qualified, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named DR. MARK C. SCHINNERER was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and that the reading and signing of the deposition by the witness were expressly waived by the witness and by stipulation of counsel; that said deposition was taken on Tuesday, the 13th day of April, A.D. 1971, in the City of Cleveland, County of Cuyahoga, and State of Ohio, pursuant to notice and stipulations of counsel herein contained, and was completed without adjournment; that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 14th day of April, A.D. 1971.

Signed, Dennis W. Hagestrom, Certified Shorthand Reporter and Notary Public, State of Ohio.
550 Engineers Building, Cleveland, Ohio
44114

My commission expires June 1, 1974.

JULIUS TANCZOS, JR., having been called as a witness on behalf of the defendants, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF JULIUS TANCZOS, JR.

By Mr. Clarke:

Q. Give the Court your name, please.

A. Julius Tanczos, Jr.

Q. Spell your last name.

A. T-a-n-c-z-o-s.

Q. Where do you live, sir?

A. 4020 Eastway Road, South Euclid.

Q. You are a native of Cleveland, Mr. Tanczos?

A. Yes.

Q. Where were you born?

A. East 120th and Buckeye Road.

Q. Did you go to the Cleveland Public Schools?

A. Yes, I did.

Q. Will you tell the Court what schools you attended?

A. Harvey Rice Elementary, Moses Cleveland Junior High, and John Adams High School.

Q. Did there come a time when you graduated from John Adams High School?

A. Yes.

Q. What did you do then?

A. I went into the United States Navy.

Q. After service in the United States Navy what then did you do—by the way, how long were you in the Navy?

A. 13 months.

Q. After your Navy service, what did you do?

A. I attended Kent State University.

Q. Did you receive a degree?

A. Yes.

Q. Tell the Court what it was.

A. Bachelor of Science in Education, with a major in Science.

Q. Did you receive any other or further professional degrees?

A. Yes, sir. I attended Kent State University at the graduate school level and received a Master of Education in Educational Administration, in 1957.

Q. Then what did you do?

A. I sought employment, and was employed as a teacher in the Cleveland Public Schools.

Q. Have you been employed by the Cleveland Public Schools then since 1957?

A. I was employed with the Cleveland Public Schools as a teacher in 1950.

MR KATZ: Your Honor, Mr. Tanczos has been in the courtroom all this time. If he were going to testify, he should have been removed.

MR. CLARKE: He doesn't have to be removed. He is here representing the defendant. He is a party representing the Cleveland Board of Education.

MR. KATZ: Is he named as a party?

MR. CLARKE: No, but he is representing the Cleveland Board of Education. Under the rules we are permitted to have one representative.

THE COURT: Go ahead.

Q. Will you continue.

A. Yes. I was employed as a teacher with the Cleveland Public Schools in 1950, and have been employed by the Cleveland Public Schools since that time.

Q. So since 1950, will you trace your work for the Cleveland Public Schools?

A. From 1950 to 1952 I taught at Alexander Hamilton Junior High School as a science teacher; and from 1952 to 1960 I was a science teacher at South High School. During that period of time from 1957 to 1960, I was head of the Science Department there.

In 1960 I was assigned as Assistant Principal at Collinwood High School. In 1961 I was assigned to the Central Office of the Cleveland Schools as Supervisor of Organization for secondary schools, in which capacity I still serve.

Q. What are your duties and functions as Supervisor of Secondary Education for the Cleveland Public Schools, in general?

A. The function of my office is to staff the secondary schools; that is, junior and senior high schools in the Cleveland City School District.

Q. As such is it necessary for you to become familiar with educational conditions in the junior and senior high schools in the Cleveland Public School System?

A. Yes.

Q. Now, directing your attention, first, to the question of violence in the Cleveland Public Schools; does the Cleveland Public School System keep a record of assaults on teachers in the Cleveland Public Schools?

A. It does.

Q. Is that a written record?

A. Yes, sir.

Q. Referring to that record if need be to refresh your recollection, will you tell the Court how many assaults by students on teachers occurred during the calendar year 1969, during the school year 1969 to 1970.

MR. KATZ: Objection, your Honor.

THE COURT: Overruled. You may answer.

A. During the 1969-70 school year there were 256 assaults upon teachers by students and others in the school.

Q. How many such assaults have occurred to date in the current school year; that is to say, the 1970 to 1971 year, to date?

MR. KATZ: Objection.

THE COURT: He may answer.

A. The most recent information my office has received was that there have been 140 teacher assaults during the current school year.

Q. Will you define to the Court what you mean by "assault," sir.

A. Yes. When I speak of a teacher assault I mean the literal, physical assault upon the body of a teacher or attempt, or a threat of assault by use of a weapon, such as a handgun, knife, or sawed-off shotgun.

Q. Do you know how many handguns, revolvers, and the like, have been confiscated so far this year by appropriate authorities in the Cleveland Public Schools?

MR. KATZ: Objection.

THE COURT: He may answer.

A. At the present time there have been 46 guns and 18 knives confiscated from students during the current school year.

Q. Approximately how many teachers are there in the Cleveland Public School System today?

A. Currently we have 5,859 teachers in the Cleveland Public Schools.

Q. Do you have any statistics on how many of them are women?

A. Yes.

Q. Will you tell the Court what that is?

A. There are 3,774 female teachers in the Cleveland Public Schools.

Q. Are there any figures, either local or national, with reference to the number of—to the percentage of those women who are of child-bearing age?

A. The most recent information that I have came from the National Education Association research report.

MR. KATZ: Objection, your Honor.

Q. Is it a published report?

A. Yes.

Q. Is it published in the field?

A. Yes.

Q. Is it required reading in your office?

A. I would be remiss if I didn't read it.

Q. Do you know anything about the circumstances of the preparation of that research report, how it is prepared?

A. It is prepared by the National Education Association, Research Division.

Q. Is that from statistics gathered all over the United States?

A. Yes.

MR. CLARKE: I submit this carries the circumstantial guarantees of trustworthiness, and would be admissible as a document.

THE COURT: He may answer.

Q. Tell us what the report shows as far as the number of women of marriageable age is concerned, school teaching women.

A. During the 1965-66 school year, which is the most recent survey I have seen, it shows that of 1,200,000 teachers approximately 68 percent were female, and approximately 50 percent of them were ages ranging from less than 25 to 39, which would, in my lay opinion, be of child-bearing age.

Q. Are those figures, so far as you know, consistent with the pattern of the Cleveland Public Schools, those national figures?

A. At the present time 64 percent of the teachers in the Cleveland Public Schools are women.

Q. So the difference is 61 percent nationally and 64 percent in Cleveland?

A. If I may correct you, I believe it is 68 percent nationally and 64 percent in Cleveland.

Q. A difference of 4 percent?

A. Yes.

Q. Now, is there, in addition to assaults by students and others upon teachers in the school, do accidents occur to teachers in the school system?

A. Yes.

MR. KATZ: Objection.

THE COURT: He may answer.

Q. Will you tell the Court, during the last school year, how many accidents occurred to teachers in school.

MR. KATZ: Objection.

THE COURT: He may answer.

A. In 1969, 136 teachers were injured, and this information came to my office on the basis of accident reports filed by teachers.

Q. Written reports filed in your office?

A. Yes.

Q. Now, of those accident reports, just without being specific as to all of them, what kind of accidents occurred most frequently?

A. Falls.

MR. KATZ: Objection.

THE COURT: The answer will stand.

Q. What was your answer? I am sorry.

A. Falls were the most prevalent accident.

Q. You mean teachers losing their balance and falling?

A. Yes, sir, or falling downstairs. There were 41 teacher falls and 25 were falls on the same level, and 16 were falls from one level to another; that is, falling down one step.

MR. KATZ: I move that the answer be stricken.

THE COURT: It will remain. Proceed.

Q. Now, sir, will you describe the duties in general of a teacher of the typical teacher in the Cleveland Public Schools. In addition to her specific teaching duties, what

other duties, if any, does she have and is she expected to perform?

A. He or she would be expected to perform duties in the hallways, in corridors, and recreational areas, between the passing of classes, in order to provide a semblance of order as these youngsters move from one area of the school building to another.

Q. Are the teachers, for example, required to be in the halls in the interim between classes?

A. Yes.

Q. What is the purpose of that?

A. In order to maintain order.

Q. Are the teachers required to be in the cafeteria, or are some teachers in some schools required to be in the cafeteria?

A. Yes.

Q. What is the purpose of that?

A. Again, to maintain order.

Q. Are teachers required to be in study halls sometimes?

A. Yes.

Q. What is the purpose of that?

A. Again, to maintain order and to assist the pupils in any problems they may have with their studies.

Q. Now, has the Cleveland Public School System taken any steps to prevent the violence that you described—these assaults on teachers?

A. Yes.

Q. What have you done?

A. During the past several years we have employed 130 security guards, and have assigned them predominantly to secondary schools within our school system.

Q. Will you define what you mean by a "secondary school."

A. Yes; grades 7 through 12 are considered to be secondary schools in Cleveland.

Q. So now the discipline situation is such that in the last few years you have hired 130 security guards?

A. Yes.

Q. And does this relieve the teachers of their security duties?

A. No, sir, it does not.

Q. Why do the teachers still have security duties if you have security guards?

A. The basic function of a security guard is to prevent outsiders from coming into the school and causing a disruption. The movement of youngsters from one classroom to another still remains the primary responsibility of the teacher rather than the security guard.

Q. Now, sir, we have offered into evidence Joint Exhibit No. 1, which is the Teacher's Handbook. Will you tell the Court how that comes to the attention of the teacher.

A. Yes. I have a copy here. Thank you.

Each year, prior to the opening of the school for students, teachers who are new in the system are provided a pre-school conference where there is some general orientation about the system as a larger system, and then about the subject area which the teacher will essentially be working in, and more specifically about the school in which the teacher—to which the teacher has been assigned.

During the general orientation period the Teacher Handbook is distributed to the teachers new in the system.

Q. And is it the hope of the school administration that all the teachers attend these pre-school conferences?

A. Yes.

Q. And those who do, get a copy of the teacher handbook?

A. Yes.

Q. Now, sir, I will ask you to assume for the moment that there is no maternity leave policy in the Cleveland School System today, so that as the plaintiffs have contended in this case, any teacher could leave the school system at any time during her pregnancy that she and her doctor decided was the time to go.

What effect if any would that have, first of all, on the administrative responsibility of your office—first of all, would it have an effect on your administrative duties?

A. Yes; it would.

Q. Tell the Court what that effect would be.

A. It would create a problem in the identification of a replacement for the teacher.

Q. Will you elaborate, please.

A. Yes. If we are given varying notices of leaves of teachers, and we must act upon short notice in some instances in finding a satisfactory replacement, a fully qualified replacement, it may be that we would have to use temporary help until such time as we found the qualified help.

Q. Now, assuming the same question again, but this time my question to you is: What effect if any would this absence of a maternity leave policy, in your opinion, based upon your opinion and expertise as a teacher of two years and an administrator of ten more; what effect if any would that have on the educational process within the classroom itself?

A. As I mentioned a moment ago, any short notice of a teacher leaving, where we have temporary help, there would be, of necessity, would be a disruption to the edu-

cational process the children were undergoing; and subsequently a further disruption when the qualified teacher became assigned to the classroom.

Q. Now, operating under the maternity leave rule, what difference does it make as far as educational disruption in the classroom is concerned? What effect under the maternity leave rule—what effort if any do you take, under the maternity leave rule, to minimize the disruption of the educational process in the classroom, if I am clear?

A. If your question now is to the last part?—

Q. Yes.

A. —we now request that a teacher notify us one month in advance of her anticipated maternity leave. This provides us with four weeks of seeking the qualified teacher to replace her, and provides a minimal disruption to that classroom.

Q. Now, you have sat through this trial as the representative of the Cleveland Board of Education. Do you recall the testimony of Mrs. La Fleur yesterday, that a qualified student teacher came in and taught with her for a month prior to her departure, prior to her leaving the school?

A. I believe so. In other words, an intern teacher?

Q. Yes; an intern teacher. Do you recall that testimony?

A. Yes.

Q. Tell us how that came about.

A. Yes. Having had a conference with Mrs. La Fleur, and being apprised of the fact that she was in fact pregnant, I began to make plans for her replacement, and as part of those plans I assigned Mrs. La Fleur's eventual replacement to her classroom February the 1st, the second semester, which is February 1st, 1971.

Q. Do I understand then that for a month the replacement was able to be with Mrs. La Fleur in her classroom and see how Mrs. La Fleur taught and become familiar with the children?

A. Yes.

Q. Was that possible because of the maternity leave policy?

A. Yes, it was.

Q. Is that an example of what you are talking about, the minimizing of the disruption?

A. Yes, it is.

THE COURT: May I ask, does that mean while that month is going on that you are paying two teachers?

THE WITNESS: Yes, we are.

THE COURT: How often does that happen?

THE WITNESS: It is not the normal procedure, where we have two teachers in one class assignment, sir.

THE COURT: Do you know how often it happens?

THE WITNESS: No, I do not.

THE COURT: O.K. Pardon me. Go ahead.

Q. A few minutes ago, again, Mr. Tanczos, you listened to Dr. Mark Schinnerer's testimony as to the reasons for the adoption of the maternity leave rule in 1952. I now ask you, in your opinion as a school administrator, based upon your experience as you have given it to us, were the conclusions of Mr. Schinnerer, as to the reasons for the rule then, and the validity of the rule now, agreeable to you? Do you agree or disagree with Dr. Schinnerer's conclusions?

A. I agree with Dr. Schinnerer's conclusions.

Q. I take it then you believe that the rule is necessary for the effective operation of a school system?

A. I do.

THE COURT: We better take our noonday adjournment. We will adjourn, Mr. Rogers, until 1:30.

(Thereupon court was adjourned for the luncheon recess.)

APRIL 20, 1971, 1:30 O'CLOCK P.M.

THE COURT: Please be seated and proceed, gentlemen.

MR. CLARKE: I have completed my direct examination, your Honor.

THE COURT: O.K. Is there cross-examination?

MISS AGIN: Yes, your Honor, if I may.

THE COURT: Surely.

CROSS-EXAMINATION OF JULIUS TANCZOS, JR.

By Miss Agin:

Q. Do you have any personal knowledge of the assaults that you read to us?

A. Would you explain what you mean by "personal"?

Q. You read a certain number of assaults. Do you have personal knowledge of any? Have you seen any of these assaults take place?

A. No, I have not.

Q. Do you know how many of these assaults took place on non-teaching personnel?

A. These were teacher assaults, so they were all on teacher personnel.

Q. How many assaults were on non-pregnant teachers?

A. I don't know that.

Q. It is all in teaching, so no students are included?

A. That is correct. These are assaults on teachers only.

Q. Do you have assaults on students, similar records?

A. I do not.

Q. Do you think that I am as able to defend myself as Mr.—

THE COURT: Wait a minute. The objection is sustained.

Q. Have you ever considered excluding from teachers all women because of their inability to defend themselves?

A. No.

Q. Have you ever considered excluding all women under 150 pounds?

THE COURT: Whether he has considered it or not wouldn't make any difference to me in deciding this lawsuit. There is no answer he could give that would give me help in deciding what I have to decide. Let's have proper questions, please.

Q. You spoke—you gave testimony on the problems of assault in the schools. Do these problems relate to other teachers as well as pregnant teachers?

A. Would you explain to me what you mean by, "relate to other teachers"?

Q. Do non-pregnant teachers get assaulted?

A. I am sure.

Q. Do men teachers with heart conditions get assaulted?

A. I assume that they do.

Q. Isn't there a problem when you are faced with a male teacher with a heart condition, that his assault might cause another heart attack?

A. Would you please repeat that.

Q. Isn't there a problem that an assault on a male teacher with a heart condition may cause him to have another heart attack?

MR. CLARKE: Objection.

THE COURT: Sustained.

Q. You spoke of falls by teachers. How many of these falls were by non-pregnant teachers?

A. I have no knowledge as to whether the teacher was pregnant or not.

Q. How many of these were by pregnant students?

A. None. These were all falls of teachers.

Q. Do you have records on falls of students in your schools?

A. Yes. I am sure there are records of falls of students.

Q. Are you familiar with those records?

A. No, I am not.

Q. Do some teachers begin to look pregnant by the end of their third month of pregnancy?

MR. CLARKE: I object.

THE COURT: Sustained.

Q. Have you ever received reports on giggling at pregnant teachers?

A. No, I have not.

Q. Have you ever received reports on giggling at pregnant students?

A. No, I have not.

Q. Do you ever allow teachers or other personnel to remain in school past the fourth month of pregnancy?

A. There is one exception.

Q. What is the exception?

A. When a teacher is pregnant and the end of her fourth month of pregnancy is within two to three weeks of the end of the school term, we will permit her to complete the school term.

Q. Are you familiar with Myra Clarke? She is an office worker in Patrick Henry Junior High School.

A. No, I am not familiar with her.

Q. Then you would not be familiar with the fact that she stayed until the end of her seventh month?

MR. CLARKE: Objection.

THE COURT: Sustained.

Q. You testified about security guards.

A. Yes.

Q. Do you know the circumstances of the security guards at Patrick Henry Junior High School?

A. Could you give me more information as to your question. I don't understand what you mean by "circumstances."

Q. Do you know where the guards are placed in Patrick Henry Junior High School?

A. The security guards, not only in Patrick Henry, but in all of our secondary schools, are placed at doorways, entrances to the buildings.

Q. Was your earlier testimony that security guards do not relieve teachers from their security functions?

A. Yes.

Q. Do you know that there are security guards in the lunch room at Patrick Henry Junior High School?

A. No, I do not.

Q. Do you know that no teacher has lunchroom duty at Patrick Henry Junior High School?

A. No.

Q. Do you know that no teacher has lunchroom duty at Central Junior High School?

A. No, I do not.

Q. Are you aware that in Central Junior High School there are seven periods this year?

A. Yes. I am familiar with that.

Q. Are you aware that next year there will be seven periods in the junior high schools in this city?

A. No.

Q. Are you aware that study hall will be eliminated next year?

A. No.

Q. Do teachers stand in the halls during the classes?

A. Some teachers do.

Q. When they stand in the hall between classes how long do they actually stand there?

A. It is the normal procedure for the principal to request the teachers stand in the hallway between classes for the entire period of time that students pass from one class to another, and this varies.

Q. Would you give an average?

A. From three to five minutes, depending on the school.

Q. Do you know that in some schools teachers do not stand in the halls during classes?

A. No, I do not.

Q. You testified to the lack of uniformity in notice to the school system where there is no maternity rule.

Now, would a rule providing for notice of one month, or even two months before a teacher leaves, be sufficient to cure this lack of uniformity and notice?

A. Would you repeat the last part of your question, please.

Q. Would a rule providing for notice one month or two months before the teacher, a pregnant teacher, leaves, be sufficient to cure the lack of uniformity in notice?

A. I believe it would.

Q. Are you familiar with the provisions in the rules and regulations governing unrequested leaves of absence?

A. Whose rule are you speaking of?

Q. The Board of Education's rules.

A. The rules relative to unrequested leave of absence?

Q. Yes.

A. Yes.

Q. Are you aware there is no notice requirement in the rules for unrequested leave of absence?

A. Yes.

Can you direct me to the rule that you are relating to—oh, I find it.

Yes. I am familiar with this.

Q. And you are aware there is no notice requirement? Would you like to check the rules for notice requirement in an unrequested leave of absence?

MR. CLARKE: If your Honor please, the rules are in evidence, and I think it speaks for itself.

Q. O.K. Now, if a teacher leaves permanently in the middle of the year for a reason other than pregnancy, how much notice is required by these rules?

A. There is no requirement.

Q. You testified that one month notice must be given for maternity leave.

A. This is our request, yes.

Q. Are you familiar with the maternity leave policies in the Handbook?

A. Yes, I am.

Q. What is the maternity leave stated in there; the notice requirement?

A. One month before.

Q. I beg to differ with you.

A. I am sorry—It states, "two weeks before the effective date of the leave of absence."

Q. O.K.

Now, can I ask you, have you changed the policy to one month, or was your prior testimony mistaken?

A. The policy currently is one month.

Q. But here is the Handbook, and it says "two weeks."

This is the Handbook which you testified is given to your teachers, and yet you have changed the rule and not changed it in the Handbook?

A. That is correct.

Q. O.K. Does the Administrative Code provide that maternity leave is available only to those teachers with one year of continuous service?

A. No.

MISS AGIN: I would like to introduce into evidence a letter written on February 19, by Mr. Tanczos, your Honor.

THE COURT: Do you want to ask a question about it? Show it to him.

MR. CLARKE: May I see the letter?

MISS AGIN: Sure.

Mark it as an exhibit, please.

MR. CLARKE: O.K. No objection, your Honor.

(Thereupon Plaintiff's Exhibit No. 2 was marked for identification by the Clerk.)

Q. Would you please read the first sentence in the second paragraph in this letter to the Court.

A. "In accordance with the policy on maternity leave of absence, it will be necessary that you resign your position with the Cleveland Public Schools insofar as you have not had one continuous year of service."

Q. You wrote this letter?

A. Yes, I did.

Q. Now—well, this regulation, "one year of continuous service," you testified it is not in the Administrative Code, but you mentioned it in this letter?

A. Yes.

Q. Where is it?

A. Here: "On December 14, 1970, as a member of the negotiating team for the Board of Education, in meeting with the Cleveland Teachers Union, this procedure was negotiated to be implemented for the second semester of the current school year."

Q. When did the second semester begin?

A. February 1st, 1971.

Q. And when did Mrs. Nelson apply for her maternity leave?

A. I don't know.

Q. When did Mrs. Nelson state that she was pregnant to her principal?

A. I believe Mrs. Nelson testified it was sometime in January she notified her principal of the pregnancy.

Q. Are you concerned with continuity in the classroom?

A. Yes.

Q. Do you know Mrs. Schickelberg? She is the teacher Mrs. La Fleur replaced?

A. Yes.

MR. CLARKE: The question is, "Do you know," and "Did she replace her?" It is a double question.

A. I understand that she replaced Mrs. Schickelberg.

MR. CLARKE: The question was, "Do you know her?"

THE WITNESS: No.

Q. Do you know the circumstances surrounding her replacement?

A. I believe that Mrs. Schickelberg left the Cleveland schools at the end of the calendar year, 1970.

Q. She was replaced by Mrs. La Fleur?

A. Yes.

Q. At the time she was replaced by Mrs. La Fleur did you know that Mrs. La Fleur was pregnant? Did the principal—I will rephrase that—did the principal know—

MR. CLARKE: I object. The question is, "Did the witness know."

THE COURT: Sustained as to what the principal knows.

Q. Did the principal report to you that Mrs. La Fleur was pregnant?

A. Yes, he did.

Q. Well, why did you replace Mrs. Schickelberg with a pregnant teacher, when you could have replaced her with someone who would have remained until June?

A. That was a commitment to employ Miss Sutton, who eventually replaced Mrs. La Fleur, for employment for the second semester of the current school year.

Knowing that this commitment of employment had been made to Miss Sutton, and knowing that Mrs. La Fleur was pregnant, this information had to be taken into account in terms of the assignment of the teachers to this particular class.

Q. Are you familiar with the circumstances of Mrs. Nelson's replacement?

A. Yes.

Q. When did Mrs. Nelson's replacement begin working with Mrs. Nelson?

A. I believe Mrs. Nelson's replacement was in the building sometime during the week prior to the beginning of Mrs. Nelson's leave.

Q. When did she go to class with Mrs. Nelson?

A. I don't know that.

Q. Did she go to class with Mrs. Nelson the whole time she was in the building?

A. I don't know that.

Q. Do you know Mr. Greenstein at Central Junior High School?

A. I know of Greenstein.

Q. Do you know he left the school system?

A. Yes.

Q. Do you know he was replaced by a student?

A. Yes.

Q. And that a permanent replacement was not found for some time?

A. Yes.

Q. Do you know Mrs. Lukash at Central High School?

A. Yes.

Q. Do you know she was replaced by a student?

A. Yes.

Q. Do you know that it was two weeks before a replacement was brought in?

A. Yes.

Q. So continuity—wouldn't you say that continuity is not possible at all times?

A. Yes.

Q. Do you know about the broken windows at Mrs. Nelson's school?

A. Yes.

Q. Do you know at what time they were broken?

A. No.

Q. Do you know for a fact they were broken when Mrs. Nelson was in class?

A. No, I do not.

Q. Now, what duties of a teacher require great physical exertion?

A. Could you delineate what you mean by "great physical exertion"?

Q. I can't delineate it because the defendant has been suggesting there is "great physical exertion" in teaching, and I would like to know what that great physical exertion is.

A. There is—

THE COURT: Wait a minute. Did you ask that of the people who so delineated?

MISS AGIN: No. It was just brought out in questioning. No one was ever asked. I seek to ask that now.

THE COURT: Seek what?

MISS AGIN: I seek to ask what that great physical exertion was. No one ever answered the question. It was just in questions.

THE COURT: Hold up. Read that back to me. (Thereupon last colloquy was read by the court reporter.)

THE COURT: By "defendant" you mean the Board of Education?

MISS AGIN: Yes.

THE COURT: Are you able to answer the question?

THE WITNESS: I can attempt to, your Honor.

THE COURT: Go ahead. Make the attempt.

A. It is a normal situation for a teacher to be on his or her feet for six periods of a school day. The additional auxiliary duties of a teacher to be in a hallway between the times that the classes are passing from one room to another is also part of their physical effort, if you will.

Beyond that I could not express an opinion.

Q. So that standing—it is standing which is the great physical effort?

A. Yes.

THE COURT: May I find out how long is a period?

THE WITNESS: Yes, sir, your Honor. The normal period for a secondary school in Cleveland is 45 minutes. We have a number of junior high schools currently which are 55 minutes in length, but those have only seven periods a day in the school day.

THE COURT: O.K.

Q. Do teachers, to your knowledge, ever sit during class?

A. Yes.

Q. Do they sit on their lunchroom breaks?

A. Yes.

Q. Do they sit in their class schedule, which is marked for planning sessions?

A. Yes.

Q. So they are not continually on their feet?

A. No.

Q. Can teachers go to the bathroom in the five minutes' break between classes?

A. Yes.

Q. Are there telephones in the classrooms?

A. There are in some schools.

Q. What is the purpose of the telephones?

A. The telephones that are to be found in the classrooms in the Cleveland schools are inter-school telephones. They are not public telephones, and they are used by the administrative staff to contact teachers and/or pupils.

Q. You testified that all teachers received handbooks; these rules and regulations.

MR. CLARKE: I object. He testified that all teachers who are required to attend the preschool conferences received them.

Q. Are you aware that Mrs. Nelson attended the preschool conference?

A. No, I am not.

Q. How would you explain Mrs. Nelson's attendance at this conference and failure to be given this school handbook?

THE COURT: The objection is sustained.

Q. You testified—strike that.

What is the teacher turnover in the inner schools?

A. In the "inner schools"?

Q. Inner city schools, excuse me.

A. It would vary from year to year. On an average it would be between 15 and 20 percent.

Q. Is this higher than the turnover in the better neighborhood schools?

A. I am not sure I know what you mean by "better neighborhood schools."

Q. The schools that are not in the inner city.

A. —but in the city school district?

Q. Yes.

A. This would be slightly higher.

Q. Are you familiar with the turnover rate in suburban school systems?

A. Yes.

Q. Would you say the turnover rate—is the turnover rate in suburban school systems higher than the turnover rate in the inner city schools?

A. Yes.

Q. Higher?

A. —I beg pardon. I would like to correct that statement. No; they are not higher.

Q. Are you familiar with the qualifications of these two inner city teachers?

A. Yes.

Q. Is it difficult to get teachers with these qualifications to work in the inner city schools?

THE COURT: That wouldn't have any probative value in our question here, whether it is difficult or whether it isn't.

MISS AGIN: I think it has probative value.

THE COURT: You have a right to disagree. I am trying to tell you it is an improper question. If you don't want to listen, all right.

Go ahead with a proper question.

Q. Would you consider it judicious to encourage teachers of this quality to stay in the Cleveland Public School System?

MR. CLARKE: Objection.

THE COURT: What he thinks is judicious wouldn't make any difference here.

Q. As an administrator of the school system, do you try to encourage teachers of this quality to stay?

THE COURT: It is the same question in another form.

MISS AGIN: Well, he was asked about the maternity leave.

THE COURT: He was asked many things he shouldn't have been asked, and I am trying to get you to get on the track. It is a legal track we have to go on.

MISS AGIN: No further questions.

THE COURT: I want to ask one question.

Are you able to tell me, sir, on an average, how many pregnant teachers at a given time are off duty due to pregnancy?

THE WITNESS: In the Cleveland School District, your Honor, there are approximately 225 teachers on maternity leave of absence at any given time.

THE COURT: I see. That is a fair average for the year?

THE WITNESS: This is an estimate on my part, sir.

THE COURT: And it has to do with those who are off duty because of the five month rule?

THE WITNESS: Yes.

THE COURT: O.K. That is what I wanted to know.

REDIRECT EXAMINATION OF JULIUS TANCZOS, JR.

By Mr. Clarke:

Q. Mr. Tanczos, it requires great physical exertion to resist assault on the part of a teacher?

A. Yes, it does.

RECROSS-EXAMINATION OF JULIUS TANCZOS, JR.

By Miss Agin:

Q. Would the physical exertion be the same from the non-pregnant person as from a pregnant person?

MR. CLARKE: Objection. That is a medical question.

THE COURT: Yes. That is a medical question.

MISS AGIN: No further questions.

MR. CLARKE: That is all I have.

THE COURT: That is all, sir. Thank you.

MR. CLARKE: The defendants rest, your Honor.

THE COURT: Proceed.

MR. KATZ: We have nothing further, your Honor.

THE COURT: Well, I better talk to counsel for a minute then. Come up, please.

(Thereupon bench conference ensued off the record.)

THE COURT: Let the record show that counsel preferred at this time not to make any effort to argue the case, but to file additional briefs; and Mr. Clarke has until the 27th of April to file his, and Mr. Katz has to May 4th to file his; and that concludes our work for the day.

We will take an adjournment until 10:00 o'clock tomorrow morning.

(Court was adjourned.)

CERTIFICATE

I, Roy Thompson, Jr., Official Court Reporter in and for the District Court of the United States for the Northern District of Ohio, Eastern Division, do hereby certify the above and foregoing is a true and correct transcript of the proceedings herein.

ROY THOMPSON, JR.
Official Court Reporter

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JO CAROL LA FLEUR.

Plaintiff.

v.

**CLEVELAND BOARD OF
EDUCATION, et al.,**

Defendants

CIVIL
ACTION
NO. C 71-292

ANN ELIZABETH NELSON.

Plaintiff,

y.

**CLEVELAND BOARD OF
EDUCATION, et al.,**

Defendants

CIVIL
ACTION
NO. C 71-333

) MEMORANDUM
) and
) ORDER

CONNELL, J.

This case has been presented to this Court asking for injunction against the defendant, Cleveland Board of Education, from enforcing a regulation of the Cleveland School Board prohibiting teachers who become pregnant from teaching their classes past the fourth month of pregnancy.

The plaintiffs in the case, Jo Carol La Fleur and Ann Elizabeth Nelson are teachers in the Cleveland Public School system. Both teachers are married and pregnant; Mrs. La Fleur is expecting birth of her child sometime from the mid to the end of July of this year, while Mrs. Nelson expects her child on August 26, 1971.

Mrs. Jo Carol Le Fleur, C71-292, is a teacher at Patrick Henry Junior High School and has taught her class from September 1970 until March 12, 1971 when, due to the enforcement of the school board regulation, she was asked to discontinue her duties due to her pregnancy. The plaintiff, La Fleur, taught a seventh grade class composed exclusively of girls who are designated as under-achievers or problem children. This class is called a "project transition" class which is supervised and operated by the Cleveland public school and partially funded with Federal money. This class is composed exclusively of girls, about twenty-five in number, to be being given special attention for purposes of making them ready for the eighth grade in school. Mrs. La Fleur did not request the maternity leave, rather the regulation was enforced as to this plaintiff and her maternity leave was involuntary. Presently, in her absence, the class is being taught by a substitute teacher.

The plaintiff, Ann Elizabeth Nelson, C 71-333, is a French teacher at Central Junior High School. She has taught French to seventh, eighth and ninth grade students since September 1970. Mrs. Nelson reported her pregnancy to her principal on January 29, 1971, and applied for maternity leave.

This case came on for hearing on April 19, 1971. The issues being identical in nature, the cases were tried and submitted together and both will be decided in this memorandum and order.

The regulation in question concerns maternity leaves of absence for teachers and is stated on pages 20-21 of the teachers handbook, Joint Ex. 1. The regulation provides that:

"Any married teacher who becomes pregnant and who desires to return to the employ of the Board at a future date may be granted a maternity leave of absence without pay."

The application of this regulation provides that the absence shall be effective not less than five months before the expected date of the normal birth of the child. Further, the regulation states that in application; this leave of absence shall be effective not less than five months before the expected date of the normal birth of the child, and application for such leave to the superintendent at least two weeks before the effective date of the leave of absence.

The plaintiffs contend that this regulation discriminates against the plaintiffs as female employees with respect to their employment and deprives them of their "rights, privileges and immunities secured by the Constitution and laws of the Civil Rights Act of 1871, (42 U.S.C. § 1983)." Plaintiffs pray this Court grant a Declaratory Judgment ruling that the policies and practices of the school board are unlawful, and further the plaintiffs request the granting of a preliminary and permanent injunction enjoining the Cleveland Board of Education from discriminating against the plaintiffs on the "basis of sex with respect to the terms and conditions and privileges of her employment and compensation thereof in deprivation of her rights, privileges and immunities secured by the United States Constitution and laws and the Civil Rights Act of 1871."

The defendants maintain that the regulation is a "valid exercise of the school board's statutory authority to make

rules and regulations for its government and the government of its employees and the pupils of the school, pursuant to Ohio Revised Code Section 3313.20." The defendants further contend that "the maternity leave policy violates no constitutional rights of the plaintiff and is not discriminatory in any sense, let alone a per se discrimination based wholly on sex."

This Court reads the complaint as being brought pursuant to 42 U.S.C. § 1983 for an alleged violation of the plaintiffs' guarantee of equal protection under the Fourteenth Amendment to the United States Constitution. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343; giving the district court original jurisdiction to hear cases for redress of deprivations arising under color of State law for alleged violations of privileges or immunities secured by the Constitution of the United States or by any act of Congress providing for the equal rights of citizens.

It is necessary to point out that the plaintiffs have not brought this action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*

The facts show that the maternity regulation in question was adopted in the early fifties upon the request of Dr. Mark C. Schinnerer, Superintendent of the Cleveland Public Schools. Prior to this time no maternity leave regulation had been in effect. The rule as it appears today is essentially the same as it was when adopted. The change in the rule now permits the mother to return at the beginning of the semester following the age of three months of the new child rather than the six months as previously provided. Also, the regulation now asks for one month's notice of pregnancy leave prior to the termination of employment rather than two week's notice as stated in the regulations as it now appears.

The evidence shows that prior to the rule, the teachers suffered many indignities as a result of pregnancy which consisted of children pointing, giggling, laughing and making snide remarks causing interruption and interference with the classroom program of study. The evidence shows that there were numerous reports of similar incidents which brought about the need for the Board of Education to prevent the continuance of this disruptive situation.

The evidence further shows that there were many instances where teachers refused to voluntarily withdraw from teaching until the birth of the child; and although no child was born in the classroom, a few times it was very close. The evidence shows that in one instance where a teacher's pregnancy was advanced, children in a Cleveland junior high school class were "taking bets on whether the baby would be born in the classroom or in the hall." Dr. Schinnerer testified that the purpose of this rule was to protect the teacher and maintain the continuity of the classroom program. When the regulation was presented to the Board of Education for adoption, at a public meeting, the vote of the Board of Education was unanimous.

The Cleveland Board of Education is concerned with the well-being of over 5800 teachers, of which 3774 are women. It is further pointed out that fifty percent of these women are of childbearing age, and that an average of 225 teachers are on maternity leave at all times.

A plaintiffs' witness testified that the incidence of violence in the Cleveland schools had increased steadily over the last ten years. The concurring evidence of Mr. Julius Tanczos, Supervisor of Secondary Organization of the Cleveland public schools shows that there were 256 assaults upon teachers by pupils and others, within the school buildings in the 1969-70 school year. The record shows that up to the date of the lawsuit, 140 such assaults

had already taken place. The school system classifies an assault as the physical contact with the person or the threatening of a teacher with a weapon. This year alone, there has been the confiscation of 46 guns and 18 knives in the Cleveland public schools. Further it is shown that there were 136 teachers accidentally injured as the result of falls in corridors and hallways during the 1969-70 school year.

The duties of a teacher in the Cleveland public schools require her to be on her feet much of the day, and aside from teaching, they include the maintenance of order in the classrooms and the supervision of the movement of students in the halls, corridors and sometimes in the cafeterias. In addition to the teachers, the public school system employs 132 security guards which are stationed in the secondary schools, grades seven thru twelve, for the specific purpose of maintaining order and keeping outsiders from entering the school building.

With respect to the health of a pregnant teacher, during a normal pregnancy, the woman should gain between fifteen and twenty pounds. Pregnancy is a normal condition; and these individuals may continue to lead normal lives, however, the evidence shows complications can arise and the resulting effects can be very serious.

The evidence shows that toxemia occurs in as high as ten percent of pregnancies. This condition can occur slowly and may be unforeseen and will prohibit the individual from working until the condition is brought under control. The more serious complication of placenta previa occurs in one percent of the pregnancies and this condition is very serious and its gravity greatly increases should it occur after the sixth month. This condition can be brought about by a sudden or violent physical exertion and can result in the woman's death; immediate hospitalization is required.

It is further shown that the frequency of urination increases during the last three months of pregnancy, the woman's agility is impaired, and strenuous, sudden physical exertion is forbidden.

The evidence shows that the primary purpose for the initiation of this rule was to protect the continuity of the classroom program. The school board maintains this rule in an attempt to bring the disruption of the classroom program to a minimum. They further maintain that use of the one month advance notice requirement gives the school board the most accurate indication as to when the teacher will discontinue her duties and the new instructor will assume the responsibility of the study program. The purpose is also to allow the new teacher to become familiar with the classroom program and the students under the guidance of the original teacher who is about to depart. Furthermore, the purpose is to give the school board notice so that the original teacher's unexpected and sudden leave will not occur, and thus guaranteeing classroom continuity and providing the best possible safeguard against the disruption of the students' education. The intended purpose of the section in the regulation which permits the teacher to return at the beginning of the regular school semester following the child's age of three months is designed to protect the health of the mother and the child and assure continuity of the classroom program.

The Cleveland Board of Education is authorized to initiate such rules and regulations pertaining to employees and pupils as are necessary for the operation of its government. See Ohio Revised Code § 3313.20. The regulation in question had been made pursuant to this state statute and from this state action the Fourteenth Amendment question comes before this Court.

In *Morey v. Doud*, 354 U.S. 457, 463-64 (1954) the

Court summarized the rules for testing discrimination under the Fourteenth Amendment and states as follows:

"The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon a reasonable base, but is essentially arbitrary. *Lindsley v. National Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911).

In speaking of the "Equal Protection" clause of the Fourteenth Amendment, the Court in *McGowan v. Maryland*, 366 U.S. 420, 425 (1960) stated;

"the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their law results in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

In *Williams v. McNair*, 316 F. Supp. 134, 136 (1970) a three judge panel in deciding whether men have the right to gain admission to an all girls' college said:

"The Equal Protection Clause of the Fourteenth Amendment does not require identity of treatment for all citizens, or preclude a state, by legislation, from making classifications and creating difference in the rights of different groups. It is only when the discriminatory treatment and varifying standards, as created by legislative or administrative classification are arbitrary and wanting in any rational justification that they offend the Equal Protection Clause." (Citations omitted.)

Limitations placed upon women have been held as non-discriminatory. In *Muller v. Oregon*, 208 U.S. (1908) the Court in deciding a work hour limitation statute pertaining to women took into consideration the differences in the sexes and said:

"The two sexes differ—in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-contained labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her."

The Court in *Seidenberg v. McSorley's Old Ale House, Inc.*, 317 F. Supp. 593 (1970), found no justification for a rule which excluded women as potential customers in an ale house while giving preference to men.

This Court finds that the enormous task of providing an education for thousands of young students, and the regulations enacted in the furtherance of this purpose has no relevance to a regulation enacted by an ale house prohibiting the sale of alcoholic beverages to women and will be given no weight by this Court.

The plaintiffs cite *Schattmann v. Texas Employment Commission*, 3 CCH para. 8146, p. 6459 (W. D. Tex. 1971) in which jurisdiction for relief is based upon Title VII of the Civil Rights Act of 1964, § 2000 *et seq.* of Title 42 U. S. C., as earlier pointed out, this is not the basis of jurisdiction in the instant case and the resulting difference in the applicable test is afforded little consideration. Furthermore, *Schattmann* did not involve a situation in which the education of children presented a most important issue. In *Schattmann*, *supra*, p. 6460, the stipulation that the plaintiff "was a permanent desk worker whose job entailed no significant physical exertion of personal contact with the public" could not be further from the necessary demands of a junior high school teacher responsible for the education of students in the Cleveland schools.

The plaintiffs maintain that the traditional "reasonable basis test", *Lindsley supra.*, is not applicable in this case. Their contention being that *Shapiro v. Thompson*, 394 U.S. 618 (1969), requires that for this Court to uphold the regulation in question the states meet the burden of showing a compelling state interest. In *Shapiro*, what was in question was the plaintiff's right to travel in interstate commerce and its resulting qualification for public assistance. In this instance the Court stated on page 638:

"Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest."

The *Shapiro* case requires a stricter standard in judging cases involving fundamental rights. However, allegations alone are not the criteria for automatic application of this standard.

The plaintiffs, citing *Shapiro*, presume their contentions are of fundamental concern preempting the considerations of the school board and giving rise to the

application of this stricter standard. The primary duty of the school board is to educate students, and if necessary regulations may be enacted in the furtherance of this function. Education is the right of a child, and the school board is before this Court protecting these rights which involved the thousands of students within its jurisdiction.

Speaking of this right, the Supreme Court stated in *Brown, et al. v. Board of Education of Topeka, et al.*, 394 U.S. 483, 493 (1954) that;

"Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

The rights in this case weigh most heavily with the students, and this Court holds that those assaulting this most serious concern of the school board must meet the traditional due process test of showing that the regulation is without a reasonable basis.

The Cleveland public schools had operated prior to the early 1950's without this maternity leave rule, and the experiences were such that the Board was compelled to adopt a regulation to remedy this impediment to its educational function.

This requirement of maternity leave gives the school the best assurances that sudden disruption of the students' classroom program due to an unforeseen complication in the teacher's condition will be minimized. The requirement of advance notice of termination also allows time for a substitute teacher to work and train with the intended class prior to assuming her full responsibilities, further maintaining continuity in the classroom program. The provision for resumption of employment after the child's birth serves the purposes of maintaining classroom continuity and protecting the health of the mother and child.

7
This regulation has minimized the classroom distractions and disruptions which had occurred prior to its adoption, further attesting to its necessity and reasonableness, and this court so finds.

The problem of the teacher's health and safety, before and after the child's birth, is of itself a valid concern of the school board aside from its interest in the students' education.

In an environment where the possibility of violence and accident exists, pregnancy greatly magnifies the probability of serious injury.

This court finds that for the reasons stated herein, the regulation in question is entirely reasonable, and most adequately meets the prescribed tests.

This court finds that the Cleveland Board of Education has not discriminated as to women whose condition is attendant to their sex.

This court finds that there is a reasonable basis for the rule which distinguishes pregnant teachers from all other teachers.

This court finds that no showing of a violation of the plaintiffs' constitutional rights has been made.

This court finds that the regulation furthers the design for quality education, and serves the important interests of the students in implementing this fundamental right.

This court finds that the plaintiffs' burden of showing that the maternity leave of absence is arbitrary and unreasonable has not been sustained.

In accordance, the maternity regulation of the Cleveland Board of Education is sustained in its entirety.

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This constitutes the findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

James C. Connell, Judge
United States District Court

Dated May 12th, 1971.

231a

**THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

Judge's Chambers

Cleveland, Ohio 44114

May 17, 1971

Gentlemen:

A correction has been made in the original memorandum, *La Fleur and Nelson v. Cleveland Board of Education*, C 71-292 and C 71-333, respectively.

On page 12, line 19 (quote not included), the word *due process* has been changed to *equal protection*.

Enclosed is the respective page which may be substituted in the original copy.

Thank you.

James C. Connell, Judge
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JO CAROL LA FLEUR,)	
<i>Plaintiff</i>)	
v.)	Civil Action
CLEVELAND BOARD OF)	No. C71-292
EDUCATION, et al.,)	
<i>Defendants</i>)	
ANN ELIZABETH NELSON,)	
<i>Plaintiff</i>)	Civil Action
v.)	No. C71-333
CLEVELAND BOARD OF)	
EDUCATION, et al.,)	NOTICE OF
<i>Defendants</i>)	APPEAL

Notice is hereby given that Jo Carol La Fleur and Ann Elizabeth Nelson, plaintiffs above named hereby appeal to the United States Court of Appeals for the Sixth Circuit from the final judgment entered in this action on the 12th day of May, 1971.

May 25, 1971

CAROL S. AGIN
3459 Glencairn Road
Shaker Heights, Ohio 44122
Tel: 283-1653
Attorney for Plaintiff

OPINION OF THE COURT OF APPEALS

No. 71-1598

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JO CAROL LA FLEUR AND ANN ELIZ-
ABETH NELSON,

Plaintiffs-Appellants,

v.

CLEVELAND BOARD OF EDUCATION,
ET AL.,

Defendants-Appellees.

APPEAL from the
United States Dis-
trict Court for the
Northern District
of Ohio, Eastern
Division.

Decided and Filed July 27, 1972.

Before: CLARK, Associate Justice,* PHILLIPS, Chief
Judge, and EDWARDS, Circuit Judge.

EDWARDS, Circuit Judge. This is a complaint alleging violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. It is brought on behalf of two pregnant school teachers in the Cleveland school system under the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1970). Each has been placed on "maternity leave" involuntarily and seeks reinstatement with back pay and injunctive relief against the implementation of the school board's maternity leave policy. Each claims that the school board's rule is an unconstitutional discrimination on grounds of sex.

The rule appellants attack has the effect of requiring a pregnant teacher to take unpaid leave of absence from

* Honorable Tom C. Clark, Associate Justice of the Supreme Court of the United States, Retired, sitting by designation.

her school duties five months before the expected birth of a child and to continue on such status thereafter until the beginning of the first school term following the date when the baby becomes three months old.

The school board rule under attack provides as follows:

"Any married teacher who becomes pregnant and who desires to return to the employ of the Board at a future date may be granted a maternity leave of absence without pay.

"APPLICATION A maternity leave of absence shall be effective not less than *five (5) months before the expected date* of the normal birth of the child. Application for such leave shall be forwarded to the Superintendent at least *two (2) weeks before the effective date of the leave of absence*. A leave of absence without pay shall be granted by the Superintendent for a period not to exceed *two (2) years*.

"REASSIGNMENT A teacher may return to service from maternity leaves not earlier than the *beginning of the regular school semester which follows the child's age of three (3) months*. In unusual circumstances, exceptions to this requirement may be made by the Superintendent with the approval of the Board. *Written request for return to service from maternity leave must reach the Superintendent at least six (6) weeks prior to the beginning of the semester when the teacher expects to resume teaching and shall be accompanied by a doctor's certificate stating the health and physical condition of the teacher. The Superintendent may require an additional physical examination.*

"When a teacher qualifies to return from maternity leave, she shall have priority in reassignment to a vacancy for which she is qualified under her certificate, but she shall not have prior claim to the exact position she held before the leave of absence became effective.

"A teacher's failure to follow the above rules for maternity leave of absence shall be construed as termination of contract or as grounds for dismissal." (emphasis in original)

The District Judge who heard this case took extensive testimony, made findings of fact and concluded that the Cleveland Board of Education's rule did not discriminate against women and was not so unreasonable or arbitrary as to be unconstitutional. The basic rationale for the District Judge's holding is set forth as follows:

"The evidence shows that the primary purpose for the initiation of this rule was to protect the continuity of the classroom program. The school board maintains this rule in an attempt to bring the disruption of the classroom program to a minimum. They further maintain that use of the one month advance notice requirement gives the school board the most accurate indication as to when the teacher will discontinue her duties and the new instructor will assume the responsibility of the study program. The purpose is also to allow the new teacher to become familiar with the classroom program and the students under the guidance of the original teacher who is about to depart. Furthermore, the purpose is to give the school board notice so that the original teacher's unexpected and sudden leave will not occur, and thus guaranteeing classroom continuity and providing the best possible safeguard against the disruption of the students' education. The intended purpose of the section in the regulation which permits the teacher to return at the beginning of the regular school semester following the child's age of three months is designed to protect the health of the mother and the child and assure continuity of the classroom program." *La Fleur v. Cleveland Board of Education*, 328 F. Supp. 1208, 1211 (N.D. Ohio 1971).

Appellants' contentions are that the rule is arbitrary and unreasonable in its overbreadth and that it is a discriminatory rule applicable to only one sex, in violation

of the equal protection clause of the Fourteenth Amendment.

It is relevant for us to note two developments which have occurred since this case was argued. First, in a split decision a panel of the Fifth Circuit held a distinctly less onerous maternity leave rule of the Texas Employment Commission not to be arbitrary and unreasonable in a constitutional sense. *Schattman v. Texas Employment Commission*, — F.2d — (5th Cir. 1972). (Decided March 1, 1972, order amending Judge Wisdom's Opinion dated March 17, 1972.)

Second, Congress has now amended Title VII of the Equal Employment Opportunity Act to make it applicable to public schools. 42 U.S.C. § 2000e(a), P.L. 92-261, 86 Stat. 103 (1972). The EEOC has also adopted a rule prohibiting special maternity leave disability rules as discriminatory on grounds of sex. 29 C.F.R. § 1604.10(b), 37 Fed. Reg. 6837 (April 5, 1972).

While clearly neither of these last decisions controls our present case, they do tend to lessen the reach of our holding.

The Cleveland Board of Education maternity leave rule was adopted in 1952. It is considerably more severe in its effect upon employment of pregnant teachers than the Texas Employment Commission rule dealt with in the *Schattman* case, or any other similar rule which has been called to our attention. Depending on the period of the year when the birth of the child was expected, the effect of the rule would be to put any pregnant teacher on involuntary leave for a period ranging from six months to over a year. The Texas Employment Commission rule required leave to be taken two months before expected birth and an application to return to work could be filed at any time thereafter.

The principal social purpose claimed to be served by the Cleveland Board of Education rule is continuity of classroom instruction and relief of burdensome administrative problems. Yet any actual disability imposed on any teacher, male or female, poses the same administrative problems and many (including flu and the common cold) can't be anticipated or planned for at all. This rule may arguably make some administrative burdens lighter. But these are not the only values concerned. The Supreme Court reminds us:

"The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy which may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

"Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand." *Stanley v. Illinois*, — U.S. — (1972) (decided April 3, 1972) (Slip Opinion at 11-12). (Footnotes omitted.)

The three month enforced unemployment after birth has no relation to the employer's interest at all. While having a mother with her infant for a period after birth may arguably be a question of general state concern, Ohio has not thus far expressed it in any general and nondiscriminatory statute.

Appellees also urge consideration of a view expressed by the author of this rule when in 1952 he suggested its adoption. Dr. Schinnerer testified that he thought that absent the rule, pregnant teachers would be subjected to "pointing, giggling and . . . snide remarks" by the students. Basic rights such as those involved in the employment relationship and other citizenship responsibilities cannot be made to yield to embarrassment. See *Abbott v. Mines*, 411 F.2d 353 (6th Cir. 1969). Additionally, at the present time pregnant students are allowed to continue in the Cleveland schools without any apparent ill effects upon the educational system.

If there is substantial support for the Cleveland Board of Education rule to be found in this record, it must be in the testimony of the Board's witness Dr. William C. Wier, who discussed the problems of pregnancy with obvious concern. But Dr. Wier also testified that "each pregnancy is an individual matter." And his cross-examination concluded as follows:

"Q How would you advise a working woman who is pregnant as to her continued employment?

A I would first inquire what type of employment she was on — doing. If it involved physical activities, and in excess of what I would consider normal or potentially in excess, I would advise her probably that she should stop working at an earlier time than somebody who was sitting entirely at a desk job.

• • •

A (Continuing) What I was going to say is that I have had patients that worked as secretaries throughout pregnancy, and I have seen nurses that worked in the hospital going to term and practically going from the nurse's station up to the delivery room.

Now, usually the hospitals — in this situation, would put these nurses in the type of job on the hospital floor in which their physical activities were considerably reduced, and not require them to do as much; but in general I have never said to a patient, 'You can't do this or that.' I can only advise them.

Q Doctor, have you treated patients who have worked through or worked beyond the end of the fourth month of their pregnancy?

A Of course I have — many.

Q Have you always disapproved of this?

A No.

Q Have you told the women to stop working?

A I have on occasion suggested it would be a wiser thing if they discontinued work.

Q But not always?

A Oh, no."

Under no construction of this record can we conclude that the medical evidence presented supports the extended periods of mandatory maternity leave required by the rule both before and after birth of the child.

In a case decided after the District Court decision in this case, the United States Supreme Court invalidated a statute of the State of Idaho which specifically preferred male relatives over female relatives as administrators of estates. The Court's opinion commented:

"Clearly the objective of reducing the workload on probate courts by eliminating one class of contests is not without some legitimacy. The crucial question, however, is whether § 15-314 advances that objective in a manner consistent with the command of the Equal Protection Clause. We hold that it does not. To give a mandatory preference to members of either sex over members of the other, merely to accomplish the elim-

ination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment; and whatever may be said as to the positive values of avoiding intrafamily controversy, the choice in this context may not lawfully be mandated solely on the basis of sex." *Reed v. Reed*, 404 U.S. 71, 76-77 (1971).

Here, too, we deal with a rule which is inherently based upon a classification by sex. Male teachers are not subject to pregnancy, but they are subject to many types of illnesses and disabilities. This record indicates clearly that pregnant women teachers have been singled out for unconstitutionally unequal restrictions upon their employment. Additionally, as we have observed, the rule is clearly arbitrary and unreasonable in its overbreadth. As the Supreme Court said in *Wieman v. Updegraff*, 344, U.S. 183 (1952):

"We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." *Id* at 192.

We believe that the Fifth Circuit's decision in *Schattman v. Texas Employment Commission*, *supra*, is easily distinguishable on the facts and that the same is true in relation to *Struck v. Secretary of Defense*, — F.2d — (9th Cir. 1971), which dealt with pregnancy of a female officer in a war zone. On the other hand, there is a marked trend of cases to invalidate regulations based on sex classifications unless supported by a valid state interest. *Reed v. Reed*, *supra*; *Sail'er Inn v. Kirby*, 95 Cal. Rptr. 329, 485 P.2d 529 (1971); *Cohen v. Chesterfield County School Board*, 326 F. Supp. 1159 (E. D. Va. 1971); *Seidenberg v. McSorley's Old Ale House, Inc.*, 317 F. Supp. 593 (S.D. N.Y. 1970); *Kirstein v. Rector of University of Virginia*,

309 F. Supp. 184 (E. D. Va. 1970); *Heath v. Westerville Board of Education, et al.* — F. Supp. — Civil #71-379, S.D. Ohio June 29, 1972.

We do not, of course, by our holding concerning this rule deal with reasonable employer requirements of notice of impending disability or of health examinations or certificates. Such issues are not presented by this appeal.

The judgment of the District Court is vacated and reversed and the case is remanded for further proceedings consistent with this opinion.

PHILLIPS, Chief Judge. (Dissenting in part, concurring in part.) I respectfully dissent from the part of the majority opinion which strikes down the regulation pertaining to maternity leave prior to delivery.

It is my opinion that the pre-delivery part of the rule of the Cleveland Board of Education under attack on this appeal is a permissible and reasonable exercise of the discretion vested in the Board in the administration of the school system. I see no violation of the rights of teachers under the Equal Protection Clause presented by the facts and circumstances of this case.

“Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . .

By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.” *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (footnote omitted).

The capabilities of its teachers and the maintenance of sound educational environment are matters of legitimate concern to the Board of Education. The evidence presented to the District Court shows that about 225 out

of the more than 5800 teachers employed by the Board in the Cleveland school system are on maternity leave at any given time and that approximately 1900 teachers are women of child bearing age. Expert testimony established that every pregnancy impairs to some degree the ability to teach and supervise children. Pregnancy limits the capacity of the teacher to engage in normal physical activity. Mobility is reduced. A pregnant teacher is subjected to an increased risk of unexpected incapacitation. Such impairment and risk increase during the later months of pregnancy. There is no question that the medical condition of a pregnant teacher will require that she discontinue teaching at some point during the course of the pregnancy.

Appellants urge that the determination of this point of time should be made on an individual basis, relying on the thirty day notice requirement as ample to meet the objectives of the Board. The record in this case convinces me that there is no assurance that an individualized decision in all cases can be made thirty days prior to the time that medical necessity may require a teacher to discontinue her classroom duties. To impose upon the school system the obligation of examining each teacher individually throughout the course of her pregnancy to insure that she is capable of carrying out the manifold and demanding duties of her profession would constitute a burden more onerous than mere administrative inconvenience.

In my view it is not the prerogative of this court to determine whether a better regulation could be promulgated or whether a shorter period of time than the end of four months of pregnancy should be prescribed. We do not sit as a super Board of Education. Our concern is whether the regulation creates an arbitrary or unreasonable classification wholly unrelated to the objectives sought to be advanced by the Board of Education in adopting it. In my

opinion, we should not strike down the regulation because it "may be unwise, improvident, or out of harmony with a particular school of thought." See *Dandridge v. Williams*, 397 U.S. 471, 484.

Nor do I agree that the regulation should be invalidated because it applies only to pregnancy and not to other conditions and diseases that incapacitate teachers, both male and female, from classroom duties. It is true that, during the course of a school year, a certain number of teachers will experience illness or accidents requiring leaves of absence. The wide range of these incapacitating conditions is such that the Board of Education has seen fit to deal with them on an individual basis. Pregnancy, on the other hand, is a condition of predictable duration and symptoms involving a substantial number of teachers every year. In my opinion a classification dealing with this problem is not so arbitrary or unreasonable as to violate the Equal Protection Clause.

It is not every classification that amounts to a denial of equal protection.

"The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal. . . . [C]lassifications will be set aside only if no grounds can be conceived to justify them. With this much discretion, a legislature traditionally has been allowed to take reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind,' and a legislature need not run the risk of losing an entire remedial scheme simply because it failed . . . to cover every evil that might conceivably have been attacked." *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809 (1969) (citations omitted).

Upon the evidence presented in the District Court, Judge Connell found that the requirement of maternity leave prior to delivery gives the school system the best assurance that sudden disruption of the classroom program due to unforeseen complications in the condition of a teacher will be minimized. 326 F.Supp. at 1213. I agree with this conclusion. In my view it is not "clearly erroneous." Rule 52(a), Fed. R. Civ. P.

With respect to the three months post-delivery waiting period before resuming teaching, I agree with the majority opinion. No evidence was introduced in the District Court and no reasons offered to this court as to how this requirement is related rationally to any legitimate objective of the Board.

I would affirm in part and reverse in part.

**ORDER ON MOTION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC**

(Filed August 29, 1972)

No. 71-1598

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JO CAROL LA FLEUR AND ANN ELIZABETH NELSON,

Plaintiffs-Appellants,

v.

CLEVELAND BOARD OF EDUCATION, ET AL.,

Defendants-Appellees.

ORDER

Before: CLARK, Associate Justice,* PHILLIPS, Chief Judge, and EDWARDS, Circuit Judge.

On receipt and consideration of a petition for rehearing and suggestion for rehearing en banc in the above-styled case, and no judge having moved for rehearing en banc, said petition for rehearing is hereby denied. Judge Phillips dissents.

Entered by order of the Court

JAMES A. HIGGINS

Clerk

* Honorable Tom C. Clark, Associate Justice of the Supreme Court of the United States, Retired, sitting by designation.

CERTIFICATE OF SERVICE

Three copies each of the Petition for a Writ of Certiorari and Appendix have been mailed this 25th day of

November, 1972, by depositing the same in a United States Mail Box, First Class, postage prepaid, addressed to Carol S. Agin, 3800 Lake Shore Drive, Apt. 5E, Chicago, Illinois, 60613, and Lewis R. Katz, 2145 Adelbert Road, Cleveland, Ohio 44106, attorneys for plaintiffs-appellants; Sidney Picker, Jr., 3079 Van Aken Boulevard, Shaker Heights, Ohio 44120, attorney for Women's Equity Action League; David Rubin, 1201 Sixteenth Street, N.W., Washington, D.C. 20036 and Jerry D. Anker, 1730 M. Street, N.W., Washington, D.C. 20036, attorneys for the National Education Association; Lucille Houston, 816 Engineers Building, Cleveland, Ohio 44114, attorney for the American Civil Liberties Union; Susan Deller Ross, 1800 G Street, N.W., Washington, D.C. 20506, attorney for the United States Equal Employment Opportunity Commission, and Jordan Rossen, 8000 East Jefferson Avenue, Detroit, Michigan 48214, attorney for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), *amici curiae*.

CHARLES F. CLARKE
Attorney for Petitioners

247a

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
Washington, D. C. 20543

April 23, 1973

Charles F. Clarke, Esq.
Squire, Sanders & Dempsey
1800 Union Commerce Bldg.
Cleveland, Ohio 44115

RE: Cleveland Bd. of Education v. LaFleur,
No. 72-777; Cohen v. Chesterfield County
School Bd., No. 72-1129

Dear Mr. Clarke:

The Court today took the following action in the above cases:

"The motion to dispense with printing petitioners' supplemental brief in 72-777 is granted. The petitions for writs of certiorari are granted and the cases are set for oral argument in tandem."

Enclosed are memorandums describing the time requirements and procedures under the Rules.

The additional docketing fee of \$50, Rule 52(a), is due and payable in No. 72-7777.

For your information I give the names of counsel in No. 72-1129 on the attached sheet.

Very truly yours,

MICHAEL RODAK, JR., Clerk

(Mrs.) Helen K. Loughran
Assistant Clerk

AIR MAIL
Enclosures

No. 72-777

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